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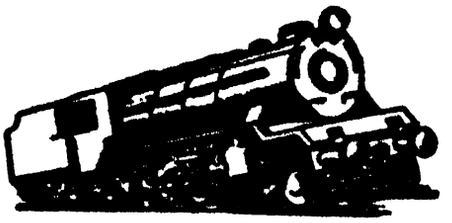
MEMORANDUM NO.

Indian Railway Passenger's Conference Association

Registered under the Societies Registration Act, 1860 and Bombay Public Trusts Act, 1950
Registered Society No. 2918 of 1953-54 and Public Trust No. F-3308 (BOM)

PREVENTION OF CRIMES AGAINST THE PASSENGERS



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- January 19, 1987 -

THE HON'BLE THE LEARNED CHAIRMAN AND
THE HON'BLE THE LEARNED MEMBERS OF THE JOINT COMMITTEE
OF BOTH THE HOUSES OF PARLIAMENT ON THE
RAILWAYS BILL No. 46 OF 1986.

The Indian Railway Passengers Conference Association, Bombay, has the honour to submit the following Memorandum containing their suggestions for the consideration of the Joint Committee on the proposed Railways Bill No. 46 of 1986 :-

C H A P T E R I

1. The Proviso to sub-section (2) of Section (1) of the proposed Bill be deleted. In order to prevent confusion in the public mind all the provisions of the proposed enactment which is to replace the Indian Railways Act 1890 should be put into force at one and the same time.

2. In the second line of sub-section (5) of Section (2), the word " Commissioners " should be inserted in place of " Commissioner ".

3. Sub-section (16) of Section (2) should be re-worded as under :-

   " freight " means the charge levied for the carriage of luggage of a passenger or the charge levied for the carriage of goods including transhipment charges, if any. "

4. Sub-section (27) of Section (2) be re-worded as under :-

   " pass " means an authority given by the Central Government or a railway administration to a person allowing him to travel free of charge as a passenger, but does not include a ticket. "

5. The words " fare " and "any passenger or" from (34) be deleted as " fare " has already been defined in sub-Section (13). Rate refers to freight traffic and fare refers to passenger traffic. Chapter VI relates to the carriage of goods by the Railways and the introduction of the words " passengers and " in line 31 of page 12 in sub-Section (1) of Section 28 is not consistent with the entire Chapter and its context.

6. Sub-section (43), (44) and (45) be added at the end of Section (2) as under :-
   -(43) " Rules " as defined in Section 210 of the Act.
   -(44) " Official Gazette " means the Government of India Gazette.
   -(45) " Central Government " means the Government of India in the Department of Railways or the Railway Board.

CHAPTER II

1. Sub-section (3) as under may be added to Section (4) :
-(3) The General Manager of a Zonal Railway functioning immediately before the commencement of this Act shall be deemed to have been duly appointed under sub-Section (1).

CHAPTER VI

1. The words " passengers and " be deleted from line 31 on page 12 in the second line of sub-Section (1) of Section 28.

The entire scheme of Chapter VI refers to freight or goods traffic and " rate " cannot be given the same meaning as " fare ". Fare refers to charge for the carriage of the passengers and " rate " to the carriage of goods. Moreover, " fare " has already been defined in sub-Section (13) of Section (2).

CHAPTER VII

1. Clause (d) of Section 35 be deleted. The Tribunal should have the power to entertain matters, issues and complaints in respect of lump sum rates.

2. The third line of Section 44 be re-Worded as under :-

" decisions or order, as if it were a decree made by that Court ".

CHAPTER VIII

1. At the end of sub-Section (2) of Section 47 add the words :-

" which will be allowed to be inspected by any person . free of charge ".

2. In the first line of sub-Section (2) of Section 48 after the word " display ", the word " prominently " should be inserted.

3. Add the following sub-Section (4) to Section 48 :-

Every railway administration shall display at important railway stations the names and addresses of the agents authorised by the railway to supply tickets to passengers.

3. Add the following sub-Section (3) to Section 49 :-
A person to whom a ticket has been issued and for whom there is no room available in the train for which the ticket was issued shall on returning the ticket within three hours after the departure of the train be entitled to have his fare at once refunded without any deduction whatever.

4. Section 50 shall be re-worded as under :-

If a ticket against which reservation has been made is returned for cancellation three hours before the scheduled departure of the train, or earlier, the railway administration shall cancel the same and refund the full amount after deducting Rs 5 ; and if the ticket is returned for cancellation within 12 hours after the departure of the train five per cent of the fare paid, not including the sur-charge, will be deducted by the railway administration.

5. Add the following sub-Section (3) to Section 53 :
The guard, the conductor, the travelling ticket examiner, or the station master of the station from which such a passenger commences his journey, will be deemed to be the authorised railway servants for this purpose.

6. Add the following sub-Section (3) to Section 54 :-

Notice indicating and notifying the infectious or contagious diseases as may be prescribed by the railway administration, will be displayed prominently by the railway administration at important and junction stations.

7. The clauses of sub-Section (2) of Section 58 shall be amended as under :-

(b) the amount of refund for the cancellation of a ticket, the amount to be deducted as cancellation charge shall not exceed Re 1/- for unreserved tickets and Rs 5 for reserved tickets and in accordance with the provisions of Section 50 of the Act..

Add the following clauses after clause (g) of sub-Section (2) of Section 58 :-

(h) for regulating the conduct of railway servants towards the passengers.

(i) for the safety of the passengers and their luggage.

(j) for the constitution and functioning of the various railway users' consultative bodies on the national, zonal, divisional, suburban, station, time table, amenities and other levels on the railways, the rights, privileges and the duties of the members thereof.

(k) for the redressal of the grievances of the railway users.

(l) for the elimination and suppression of corruption in bookings and reservations and . generally to provide a clean and corruption-free railway administration to the railway users.

(m) for the issue of certificates to passengers unable to purchase their tickets and to provide an efficient machinery at the stations and in the train to protect the bonafide passengers unable to get tickets from the punitive provisions of the Act and the Rules.

(n) circumstances under which a bonafide railway passenger would be entitled to pull the alarm chain.

8. Add the following sub-Section (5) under Section 58(2) :-

Every rule made by the railway administration or by the Central Government under this Chapter will conform to the provisions of Section 210 of the Act.

C H A P T E R IX

1. Delete sub-Section (2) of Section 63.

The goods booking clerk issues the railway receipt to the party after weighment and noting on the railway receipt the weight and the number of packages. These entries in the railway receipt are themselves an admission on the part of the railway as regards the weight and the number of packages. If the goods tendered is packed in such a way that the railway is not in a position to determine or accept the description or the classification thereof, the goods clerk can make an endorsement on the railway receipt to that effect to protect the railway administration. The general terms in which sub-Section (2) is worded is an improper attempt on the part of the railways to corner the consignees, consignors and the endorsees from all sides. The rigid and harsh stand which the Central Government and the Railways are trying to take in the Railways Bill No. 46 of 1986 towards the consignors, consignees and the endorsees is likely to drive away the trading community from the railways to road transport. An undue, improper and basically unjustifiable attitude on the part of the railways will clearly show that they are out to misuse their power as the monopolists in railway transport in the country. Such an attitude is improper.

2. The entire Section 64 is unwarranted. In the forwarding note the full particulars and the description of the goods is given, question of refusal by the consignor does not arise. It is the forwarding note that is the basis of carriage of the goods by railways. If the railways suspect that in order to secure a cheaper rate of freight, or to set up a false claim later on, or to cheat the railways or otherwise, the consignor had given false declarations in the forwarding note, the railways would be within their right to get the packages opened in the presence of panchas. The entire section is a catch against the consignor, the consignee or the endorsee. The entire Section deserves to be deleted. The power sought by the railway administration by this Section will give a free hand to the concerned railway servants to harass traders or to cause a loss to the railways by joining hands with the unscrupulous consignors etc. There should be a reasonable approach to the problem and railways should not presume that all railway users are dishonest. The Joint Committee may please consider the pros and cons of such provisions and of such powers sought by the railways over the users. The approach should be commercial and the railways themselves should not appear to be oppressive.

3. The Proviso to Section 71 should be deleted.

4. Lines 41 and 42 appearing in sub-Section (1) of Section 81 should be deleted. The railways should have no power to detain any other consignment of the said party which is in their possession or may thereafter come into their possession.

   In sub-Section (2) of Section 81, the provision for the railway administration to give notice to the consignor, the consignee or and the endorsee before action contemplated by sub-Section (2), should be made.

C H A P T E R XI

1. Section 96 : lines 14,15,16 and 17 will be re-worded as under :-

   " owner's risk rate, from whatever cause arising, unless the railway administration proves that such loss, damage, destruction, deterioration or non-delivery was not due to the negligence or misconduct on its part or on the part of any of its servants.

2. Delete clause (b) of sub-Section (1) of Section 97.

   If the goods are defectively packed and are liable to damage, deterioration, leakage or wastage, and are offered to the railway administration for carriage, the railway should refuse to get entrusted therewith. No body can force goods on the railways for carriage if the goods clerk finds them to be packed defectively etc. Instead of getting entrustment of such goods knowingly and thereafter trying to discover excuses to wriggle out of their responsibility by using various devices in the law and rules is not a proper modus operandi. The railways should give better protection to the railway users instead of making laws to make the railway users the bonded labour of the Railways. There should be reasonable safeguards both for the railways and the consignors, consignees and or the endorsees. The entire Section 97 should be revised and railways should be made to accept consignments and goods with open eyes. They are not bound to accept goods or consignments which pose a risk to them.

3. The Proviso to sub-Section (1) of Section 98 should place the burden on the Railways to prove that there was no negligence or misconduct on its part or on the part of its servants.

4. In sub-Sections (2), (3) and (4) of Section 98, railways should give notice of the arrival of the goods and consignments and that the same are not removed or unloaded within 7 days after receipt of the said notice of 7 days, the consequences indicated in the said sub-Section (2), (3) and (4) may follow, but not without 7 days notice from the date of termination of transit.

5. The following sub-Section (5) to Section 98 be added :-
At each railway goods delivery office the railway administration shall display a notice every day showing therein the particulars of the consignments which have arrived for delivery or for unloading.

5. At the end Section 99 the following shall be added :
The onus of proving that there was no negligence or misconduct on the part of the railway or any of its servants, will be on the railway administration.

6. Section 101 should be deleted. The cases referred to in clauses (a), (b), (c) and (d) are in the nature of evasion of responsibility and the railways should not be allowed to manufacture loose excuses to avoid their responsibility.

6. Section 102 , clauses (2) and (3) should be deleted as they are of a speculative nature. The device of " percentage charge " is a new innovation on the part of the railways. The claims for loss, damage, deterioration or non-delivery should be settled in the normal course without providing a complicated protective veil to the railways. The entire section ought to be re-worded and should protect both the consignor, consignee, the endorsee and the railways. A money-lender's approach by the railways should be discouraged by the Joint Committee and the laws approved by it should be just, fair and reasonable.

7. In sub-Section (1) of Section 104, . the notice should be within a period of six months from the date of the termination of transit and not from the date of entrustment of the goods for carriage.

8. Sub-section (2) of Section 104 should be deleted as a mere enquiry cannot be deemed to be a notice on the part of the claimant. Sub-section (3) should expressly provide for notice under Section 80 of the Civil Procedure Code.

9. Sub-section (2) of Section 106 is superfluous as it is not the function of the railways or the railway laws and rules to protect or affirm the rights of third parties in matters where the railways themselves are not impleadable. The parties can look after themselves under the ordinary law.

10. Add the following sub-Section (3) to Rule 110 :
Every railway administration shall print on the forwarding note a gist of the important provisions of the Act and the Rules in respect of the conditions under which goods would be accepted for carriage, the nature of disclosures required to be made by the consignor, and the obligations of the consignor, the consignee or the endorsee, and any other matters of which the consignor, the consignee or the endorsee should have notice.

C H A P T E R XV

1. Clauses (a) and (b) of sub-Section (1) of Section 142 should be separated. Offence in (b) is a serious one involving moral turpitude while in (a) it is merely ordinary unless the railway administration claims and proves that the act of travelling in train in contravention of Section 53 was with the intention of defrauding the railway. The Courts have held that the mere fact that the person travelled without a ticket or pass amounted to defrauding the railway and the railway need not prove fraud. This is not the correct view.

Section 142 should be re-worded as under :-

142. (1) If any person enters or remains in any carriage on a railway or travels in a train in contravention of Section 53, he shall be dealt with in accordance with the provisions of sub-Section (1) of Section 143 or Section 144 of the Act.

(2) If any person with intent to defraud a railway administration enters or remains in any carriage on a railway or travels in a train in contravention of Section 53, he shall be punishable with fine which may extend to one hundred rupees and shall also be liable to pay the fare and excess charge prescribed by sub-Section (1) of Section 143.

(3) If any person uses or attempts to use a single pass or a single ticket which has already been used on a previous journey, or in the case of a return ticket, a half thereof which has already been so used, he shall be punishable with imprisonment for a term which may extend to six months and to fine which may extend to one thousand rupees.

2. Section 147 should be deleted. In its place the following may

147. A passenger holding a reserved ticket for a berth or a seat by any train who is unable to use the reserved accommodation may transfer his ticket and reservation to another wait-listed passenger for the same date and train on payment of Rs 5 as the transfer fee to the station master or the ticket collector or the travelling ticket examiner or the conductor who will endorse the berth or seat number on the wait-listed ticket and the transferor will be entitled to the full refund of the fare paid by him if the ticket is presented for refund within 12 hours after the scheduled departure of the train.

3. The words commencing with " and shall " in line 38 of page 49 in Section 150 and ending with the 4th line on page 50 of Section 50 be deleted. The purpose of the railway and the public will be amply served if the offendor is removed from the railway carriage or from any part of a railway.

4. Section 152 may be re-worded as under :-

152. If any person enters upon or into any part of a railway without lawful authority, or having lawfully entered upon or into such part misuses such property or refuses to leave, he may be removed from the railway by any railway servant or by any other person whom such railway servant may call to his aid.

5. Sections 153 and 154 may be deleted. The acts referred to in both the proposed sections are offences under the Indian Penal Code and or the Criminal Procedure Code and if the railway administration finds that any false claims or false statements are made by any person to obtain gain or for exhonoration from from fraudulent act or claim, the railway administration should invoke the ordinary law in that respect as appearing in the Indian Penal Code and or the Criminal Procedure Code.

6. The last two lines of Section 161 be re-worded as under :

" he shall be removed from the railway by any railway servant and on his refusal or resistance to such removal, he shall be punishable with fine which may extend to Rs 50."

7. The last three lines of Section 169 be re-worded as under :-

" he shall be removed therefrom by any railway servant, and if he resists such removal or refuses to leave, he shall, in addition to being liable to forefeiture of his pass or ticket, be punishable with fine which may extend to two hundred rupees.

8. The fine of one hundred rupees provided in sub-Section (3) of Section 174 will be reduced to Rs 10 in case of contravention of sub-Section (1) and Rs 50 in case of contravention of sub-Section (2).
The following sub-Section will be added to Section 174 :
(4) The railway administration shall display notices in every compartment warning the passengers against smoking in terms of sub-Sections (1) and (2).

9. Seeing the progress which the world has achieved in which the child has really become the " father " of man and children are beyond the control of parents and teachers or elders, delete the provision requiring the guardian of an offending child under Section 176 to execute a bond for the good conduct of the child. It is suggested that in case the offence of the child is serious, he should be punished by being sent to the Children's Home for 10 days for the first offence and for 6 months for the second offence. It is submitted that the execution of a bond by the guardian will serve no preventive purpose.

Section 176 should be suitably amended.

10. The following sub-Section (5) be added to Section 190 :-

(5) Provided that if the person committing an offence under this Section is in possession of a valid Identity Card issued by the Railway, the Post Office, Government of India or a State Government, or issued by an employer and the identity card bears his full name and address, the person so apprehended will be released on his own bond and will be directed to appear before any Court on any day to be mentioned in the bond.

C H A P T E R XVI

1. Section 196 seeks to condone actions and omissions made by the Government or by the railway administration (which expression can be interpreted to include a railway servant) in violation or contravention of the provisions of the Act. This provision is fatal to the rights of the railway users under the Act and the Rules. Section 198 gives protection for any thing done in " good faith " which is sufficient safeguard for the railways. Section 196 should therefore be deleted.

2. The following sub-Section may be added to Section 211 :-
" The Indian Railway Board Act 1905 (Act No. IV of 1905) shall be read with and taken as part of the Railways Act 1986.

3. A provision should be made in clauses (b) and (c) of sub-Section (2) of Section 211 to permit the complainant, applicant or appellant to amend the complaint, application or appeal pending before the commencement of this Act, to meet the provisions of this Act and the changed structure of the Act and the Rules.

THE SCHEDULE - SECTION 102(1)

The following amendment in the extent of liability of the railway administration may be made :-

Elephants	Rs 10,000 each
Horses	Rs 5,000 each
Mules, Horned cattle or camels	Rs 2,000 each
Dogs, donkeys, goats, pigs, sheep or other animals not mentioned above	Rs 500 each
Birds depending upon claim	Rs 100 each

Submitted for favour of consideration by the Joint Committee.

January 19, 1987

President,
Indian Railway Passengers' Conference Association

C. B. L. BHATNAGAR

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23 Bell Building, Second Floor,
Sir Pherozeshah Mehta Road, Fort,
BOMBAY - 1

January 19, 1987

The Hon'ble the learned Chairman, and
The Hon'ble the Members of the Joint Committee of Parliament,
On the Railways Bill 46 of 1986.

Besides the Memorandum dealing with the various Sections of the Railways Bill 1986 enclosed herewith for your consideration, this Association begs to bring the following matters to your notice with the request that the same may be taken into consideration while finalising the Report of the Joint Committee and while revising and restructuring the shape and intent of the proposed Railway Bill 1986.

FARES, REFUNDS AND CANCELLATION CHARGES :

The Indian Railways are a State owned undertaking of the Central Government which sell their services to the users by carriage of passengers and goods. This is purely a commercial enterprise. When a passenger buys a reserved or an ordinary ticket he pays to the Railways in advance for services to be rendered by them by transporting him from one place to the other. If the passenger, for some reason or the other, cancels his intended journey, he gives notice that he does not wish to utilise the services of the railways by tendering the ticket for cancellation and refund. In view of the heavy demand by passengers for berths and seats, cancellations of a few tickets at the last moment, or earlier, does not make any difference to the railways as there is always a large queue of passengers needing reserved accommodation. From whatever point the matter may be considered, the railways donot suffer any loss on account of cancellation of reserved accommodation. The cost of the railway administration is the same whether a few tickets are cancelled or not. The new device of " clerical charges " is uncalled for. Same is

the case with the top heavy extortionate cancellation charges that the passengers are made to pay when tendering a reserved ticket for cancellation. To lose Rs 30, Rs 40, Rs 50, Rs 100 or more merely because the passenger is unable to undertake the journey, is not an ordinary thing which the average passenger can suffer in these days of inflation and struggle in life. A passenger buying a reserved ticket for Delhi from Bombay at 3 P.M. for a train which leaves the same day at 5 P.M. has to lose about Rs 50/- or more if he cancels his intended journey and wants a refund. The extortionate nature of the cancellation charges has not only created corruption among the railway staff but it has also made the people dishonest. And on the top of it the railways want to send the man to jail for transferring his ticket. These are not the characteristics of an honest and welfare government. The Joint Committee may have its sympathies with the railways but the poor helpless orphaned railway passengers also deserve a compassionate and human treatment from the makers of the laws. It is submitted that suitable steps be taken and the passengers may be protected from this extortion, oppression and official tyranny.

PREVENTION OF CRIMES

Vigilance at railway stations is totally absent. Railway staff who are concerned with passenger traffic, railway police constables, rakshaks of the R.P.F., anti-social elements, touts, loafers, beggars, urchins and other elements including hawkers, have full freedom to exploit, harass, blackmail, cheat and otherwise molest the passengers near booking offices, in the station passenger halls and concourse, on the platforms and in trains. The senior officials of the different wings know that they can do nothing to protect the passengers from these elements as those who are assigned for prevention are themselves partners in the illegal operations of these elements. A harassed passenger has no relief and no official can give any on the spot help. Under the provisions of the Indian Railway General Code, the

Government Railway Police is divided into two wings, one for " crime " and the other for " order ". For the " order " police the following functions are provided :-

1. Control of passenger traffic inside the station premises more particularly on the platforms, in the booking offices, waiting halls, at the entrances and exit gates.
2. Control of vehicular and other traffic in the station compound.
3. Maintenance of order in standing passenger trains when standing at stations.
4. Watching loaded passenger trains when standing at the stations.
5. The arrest of those found committing nuisance or suffering from infectious diseases and keeping the station premises clear of idlers and beggars.
6. The examination of all empty carriages on arrival at terminal stations for property left behind by passengers and to see that carriage fittings have not been tampered with.
7. The removal of bodies of persons dying in the train and on station premises and conveyance to hospitals of sick passengers.

This Association submits that these duties are of a most important nature as far as the passengers travelling by railways are concerned. There is no arrangement at any terminal and large station over the Railways for the implementation of the above objects and the proper performance of these duties by the Government Railway Police. The members of the travelling public do not know this distinction between the " crime " police and the " order " police on the railways. While the crime police can take cognisance of crimes under the Indian Penal Code and the other laws in force, investigate robberies and dacoities, thefts and other offences, the duties of the " order " police are of a preventive nature and if these duties were performed properly, the many troubles of the railway passengers would be over.

The Association submits that the Joint Committee may kindly suggest to the Ministry of Railways and to the Central Government to persuade the State Governments to provide police uniforms to the " order " police on the Railways which may be different in colour from that of the " crime " police so that passengers may seek the help and co-operation of " order " police against minor offences by anti-social elements and so that the station areas may remain clean. In every Division there should be an officer designated as the Preventive Officer whose job should be to control the work of the " order " police which can be easily achieved by seeking from the State Government the necessary delegation of powers for the Preventive Officer. If this function was properly discharged, the conditions on the railways would considerably improve and provide relief both to the railways and the railway users.

LICENSED PORTERS

The transfer of the disciplinary powers over licensed railway porters to the Panchayats of the porters has converted the fraternity of licensed porters of railways into an irresponsible force which successfully has been fleecing the passengers and defying the regulations of the railways as to porterage charges. The passengers are helpless ; the porters openly fleece and harass the passengers. It is not proper for the railways to leave the passengers at the mercy of the porters. It is difficult for this Association to suggest some remedial measures but it is requested that the Joint Committee may kindly be pleased to give some attention to this growing menace on the railways.

January 19, 1987

- C. B. L. BHATNAGAR

NATIONAL FEDERATION OF RAILWAY USERS

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CHAIRMAN - A.R. ANANDPARA, Phone-2862513

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SUGGESTION REGARDING NEW RAILWAY BILL

(1986)

Section -2

1) Eventhough the words 'Central Government' are used in the Act. there is no any definition or explanation as to the words.

The defination of Central Govt.should be incorporated.

2) The description of 'rate' is not correct. It does not include fare freight & anyother charges, but fare, - freight and any other charges are arrived at. This needs change. Definition of words, Railway administration' does not give proper description and it does not reflect the formation of Railway Board with the its duties.

3) The definition indicates General Manager as the only head of Govt. Railway or zones. The authority of the railway board or the secretaries to the Ministry of Railways is undermined.

Hence this definition is to be widened.

The scope of Railway Board, Secretaries and General Manager should be distinctly specified in the Act.

4) The word' Passenger' is not properly defined. The passenger is a common noun and in the proposed act it is made as ' particular noun'. This is not correct. In fact, the person travelling without any valid ticket or pass cannot be a passenger and hence he shall be not answerable to the provisions of this act. In order to include such persons, definition of passenger needs revision.

5) Definition of 'person' needs to be incorporated.

Section -14

deprives a citizen from filing a suit against Railway-administration. This is a blanket power to railway administration. Hence some qualifications should be laid down to

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protect the fundamental rights of a citizen.

FIXATION OF RATES (SECTION-28)

The decision of fixing the rates should not left to the sweet will of the Govt. there should be some definite norms laid down for fixing the rates. Slab-system should not in any case be adopted. There should be definiteness as to the rates to arrive at proper budgeting either of any individual or consumer of railways. The sanction of the Loksabha must be the precondition for fixing rates.

Section- 48 (1)

Sr.No.on the thicket is a must which is not included in particulars detailed in section 48.

Section -51

This section provides for the name of the person travelling but as there is no provision to denote the name on the ticket and it is not desired also by the railway administration,the section 51 becomes aither redundant or inoperative or impracticable.

Further the provision allows railway servants to change the name which means administration desires to promote mal-practices, corruption and unnecessary strifes.

Transfer of ticket should be in smooth & easy manner. Ultimately Railway is a consumers service organisation which should not treat all the passengers as dishonest.

Section -50
Cancellation of Tickets.

At present, railways are unable to provide reserved accomodation practically to all persons who approach for the same. Thereby there is always a heavy que on waiting list. No seat goes vacant. Under the circumstances, the refund of the ticket fares should be given without cutting any amount as clerical charges. Railways does not in any case loose the revenue since tickets can be issued to person on waiting list out of cancelled tickets.
If the cancellation charges are recovered at higher rate, the tendency of the passengers provokes corruption in both the quarters.

....3

The railway undertakes to carry on a passenger from one place to another and for which the ticket is issued on - taking the value of the journey. One does not understand why there should be any cut as cancellation charges while refunding the amount of ticket.

Section -58

Rules framed under this section should be published in official gazzettee & as well as made known to public. These rules should have some sanction of LOKSABHA. So there would not unilateral action to change the rates at the sweet will of the railway administration.

Section -77

This section provides for not allowing by railway servant the request for weighment of consignment made by consigner.

This is not befitting to the cannons of not only the natural justice but healthy judicial precedents. This is an encroachment upon the fundamental right of a citizen. Hence this provision needs be deleted or atleast redrafted to permit the weighment on request under any circumstances.

The powers to reject the weighment given to railway servant are excessive and tyrannical to consumer of corruption & mal-practices.

Section -78

The wrong delivery if given by railway servant, the responsibility must be attributed to the erring railway servant. Instead, the section 78 provides for immunity. Thereby there needs a revision in this section by fixing definite responsibility on railway servant in case of wrong delivery. Railway administration giving service must shoulder the responsibility to carry the goods & deliver to same to proper person in safe, sound condition. This should be incorporated while in this section. The sections as to demurrage etc. should be so drafted to fix responsibility on railway servant, to extend efficient services & to attract more customers to avail the carriage facility of railway and to increase the revenue of the railway. The provisions regarding the carriage of goods incor in the act in chapter II are basically one sided. No responsibility is cast upon either on railway servant or on the administration as whole.

The customers are held responsible for all the acts and ommirrious. The responsibility to carry goods should be shared first by the railways as carrier and neglegence & lapses should be properly fixed the according to principles of law & natural justice. The railway-servant should always feel a pinch & should act as aduly with proper responsibility as if his own goods are being carried. The excessive rates, penalties levied would not increase therevenue but load to malpractice, corruption with total rise in price index.

The defective wagons or vehicles, should not be given and if given responsibility must lie on railway,.

The timing of the arrival of railway wagons or parcel trains should be meticulously followed so as to attract more customers for carriage by railways. The carriage activity should be carried in such a manner that customers would feel as if their own machinery is being adopted to carriage of goods. Owners should be achieved. The railway should not always take a view that they are not at all concerned to the security of goods being carried.

PENAL PROVISION

All the passengers are not dishonest, but it is seen that railway thinks all passengers are dishonest, deceits. The penal provisions are drafted with this idea in mind which is proved on the provision to all sections from 142 to 192. These provision to every section provides for minimum punishment and fine and it has been made compulsory on judiciary to declare minimum punishment & levy fine. This is not correct. This shown that Indians do not have any morals. The immage of Indian who travel by railways is lowered. The powers of judiciary are encircled by limitation. Freedom & superiority of judiciary is curbed. In fact, infree & democratic country like India the values of humanity need be honoured, good in man must be highlighted. Hence all such provision fixing minimum punishments/funes should be dropped.

The Indian penal code sufficient enough to cover all the acts and commissions which are narrated in the railway act. There is no need to make railway act, a law of crimes & code of criminals & penal actions.

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There is a destinction made in between man and man. The railway servant & passenger are both humen beings. They should be dealt with on equal footings for judiciary but the railway act makes destinction by letting the railway servant free upon his breach of conduct or allowing him to go with a paltry fine (section 188).

There should not be such distination which is beyond the principles of law natural justice and human relations.

RAILWAY CONSULTATIVE COMMITTEE

There is no mention or provision for such committees in the act. There must be such consultative committees established by statue and the provisions must be incorporated in the act.

The statutory committees shall work more effectively for the better administration, redressal of grievances of - passangers, removals of illfillings, misgivings prevailing in public.

At present, the status of these committees of advisory nature which does not bestow any authority upon the members of these committees and are only of decorative nature.

This status of these committees should be enhanced.

SECTION -196

This section violates the principles of fundamental rights to approach the judiciary, hence this should be deleted.

The railway must shoulder the responsibility of -

1) Running the traine in time.
2) Carrying the goods in proper order safely in time.
3) The responsibility of delays must be properly fixed on servant and necessary check must be exericised with some deterrant minimum punishments incorporated on Railway Act so as to ensure the prestigious & monopoly position of railway in the country.

SECTION - 189 (2)

This section allows any railway servant to take help of any person for his aid'. This means railway servant can employ any unsocial element by law. This section needs be dropped.

.....

[illegible] 3

WESTERN RAILWAY SUBURBAN PASSENGERS' STUDY GROUP.

Tel.No.6722742

Topiwala Bunglow,
S.V. Road,
Goregaon West,
BOMBAY - 400 062.

19th January, 1987.

To

Shri R. S. Mani.
Senior Legislative Committee Officer,
Lok Sabha Secretariat,
Committee Branch II,
Parliament House Annexe,
NEW DELHI - 110 001.

Dear Sir,

On behalf of the W. R. S. P. Study Group, I am herewith enclosing 80 copies of recommendations of this Group to the Railway Bill 1986, for the consideration of the Select Committee.

I have further to request you to give this study group, time to give oral evidence before the Hon'ble Members of the Select Committee, preferably, when the Committee will visit Bombay.

Thanking you,

Yours faithfully,

P B Samant

(P. B. SAMANT)

Vice-President.

WESTERN RAILWAY SUBURBAN

PASSENGERS' STUDY GROUP.

Topiwala Bungalow

S. V. Road,

Goregaon (West),

Bombay-400 062.

Tel.No.6722742.

PROPOSED AMENDMENTS TO THE RAILWAY BILL No.46 OF 1986

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1. Preamble

Substitute following Preamble for the one in the Bill.

Preamble

Whereas on 21st December 1949 the Constituent Assembly (Legislative) had proclaimed that "the general tax payer shall have the status of the sole share holder in the railway undertaking" and

Whereas the Indian Railways have, during 40 years of independence dedicated themselves to the service of Bharat and its citizens in several directions and

Whereas it has become essential to note inadequacies of the Railway Act of 1890 and the need to replace the Act by a new popular law to meet new challenges of the next century and to serve common people efficiently

Be it enacted by Parliament in the thirty-seventh year of the Republic of India as follows :-

2. Clause 3(1)

Prominance of suburban railway traffic is a new sharp feature of independent India, which has emerged from the development of urban areas under successive Five Years Plans. At present this traffic constitutes 56% of the total passengers traffic and will increase to 65% in a decade or two. This traffic hardly uses 1% of railway assets. This sector of traffic needs separate treatment in railway administration. Hence following amendment is proposed.

Amendment

In Clause 3(1) after the words "Zonal Railways" add "including suburban Zonal Railways".

3. Amendment to Clause 6(a)

In Clause 6(a), after the words "carriage of passengers" add the words "or for transport of goods".

4. Amendment to Clause 19

In Clause 19, after the words "carriage of passengers" add the words "or for transport of goods".

5. Clause 28

"The phenomenon of bearing social burdens is not peculiar to Indian Railways alone. It is a built in feature in Railway systems all the world over. In many of the foreign countries the gaps in the revenues are made up by the Governments in the form of revenue grants or subsidies. In most of the

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countries, the Railways are now directly compensated for the losses they incur in consequence of their public obligations such as operation of uneconomic services, complying with price restriction orders and carrying certain traffic at concessional rates" (Indian Railway Year Book 1981-82 atpage 136).

Also Railways spend a lot on welfare of their staff by providing for health, welfare and recreational facilities, on educational assistance and subsidised housing.

At times, policies about these concessions to large sectors of community and trade are required to be revised in the context of changed situation or circumstances. It is felt that these policy decisions should be taken by Parliament instead of by the Central Government alone.

These policy decisions are reflected in revising rates (which include fares). Hence following amendment is proposed in substitution of Clause 28.

Amendment
(New Clause 28)

Clause 28 (1) : The Parliament shall by law provide for fixing rates and any other charges incidental to or connected with such carriage including demurrage and wharfage for the whole or any part of the railway and for their revision from time to time.

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Amendment
(New Clause 28)

Clause 28 (1) : The Parliament shall by law provide for fixing rates and any other charges incidental to or connected with such carriage including demurrage and wharfage for the whole or any part of the railway and for their revision from time to time.

Clause 28 (2) : Central Government may by order reduce rates passed by the Parliament in Clause (1) on conditions subject to which such reduced rates shall apply.

Note: The Hon'ble Speaker has ruled on that under the provisions of the Railway Act 1890, the Railway Minister (i.e., the Central Government) need not place revision of rates before the House. In fact, revision of rates made on 1.10.1981 was never placed before the Lok Sabha.

6. Amendment to Clause 30

(i) After the words "as may be specified" in the first para, add the words "after due notice in the manner determined by the Central Government".

(ii) In sub-clause (a) delete the words "after due notice in the manner determined by the Central Government".

7. Insertion of new Clause 30A :

Owing to severe financial constraints, the Central Government could not, during the last two/three decades, provide adequate funds to Railways for their replacement, expansion and new programmes. Extensive replacement programmes are overdue and are affecting efficiency of Railways adversely. This state of affairs will continue for next two decades.

Time has come to mobilise financial resources of various States and citizens for projects of Railways falling within those States, which, when completed,

will become infrastructure of development for those States.

The Central Government can, under Article 292 of the Constitution, borrow loans upon the security of the Consolidated Fund of the Union (i.e., Cash pool) within limit prescribed by the Parliament. However, apart from Railways all other departments of Central Government will have legitimate claims over those borrowings. Railways cannot rely upon this source solely.

However, it is possible to Railways to issue debentures by hypothecating their assets (worth Rs.10,000 crores) to raise funds for their capital programmes within several States. States, financial institutions and public will certainly respond to such raising of funds by Railways.

In order to enable the Central Government to raise funds for Railways' development programmes following amendment is proposed.

Amendment

Clause 30A: The Central Government may, raise funds for development programmes of Railways, by issuing debentures against hypothecation of Railways' Assets on such terms and conditions as will be determined by the Central Government.

8. Amendment to Clause 34

Add the following as sub-clause (d) :

(d) dispute regarding any matter in Clause 30.

9. Amendment to Clause 35

Delete sub-clause (d).

10. Clause 43

(i) After the words "an application to the Tribunal" add the words "and after giving a notice to a person in whose favour such direction was given".

(ii) After the words "such inquiry as it considers necessary" add the words "and after hearing the parties".

11. Amendment to Clause 47

(i) In clause 47(1)(ii), after the words "list of fares" add the words "charged for distance in Kilometres"

(ii) Add following as sub-clauses (3) and (4)

(3) At every station where reservations of berths and seats are made for any train, then the railway administration shall exhibit quotas for such stations, of such reservation near booking windows.

(4) Railway Administration shall publish, from time to time, number of total reservations, quotas reserved for different categories of persons and quotas of reservation available to public on every train where facilities of reservations are made available.

12. Clause 48

In Clause 48(1)(iii) at the end, add "the distance between such places in Kilometres and "

13. Clause 51

Delete 2nd proviso as it leads to abuse of authority and fraud.

14. Clause 55

After the words "maximum number of" add the word "sitting".

15. Clause 58

Delete Clause 58(2)(c).

- x - x - x - x -

Addition of Chapter VIII-A "Passengers' Amenities"

Hundred years ago, many passengers were hauled in benchless carriages of IV Class and amenities were available to upper class passengers only.

After independence Indian Railways have introduced classless, long distance fast trains with soft padded berths, fans, cheap food, drinking water and standard toilets and hence citizens were proud of these achievements of Railways.

However, due to overcrowding, mismanagement, corruption, thefts and irresponsibility of many railway officers and citizens, these newly gained achievements are being thrown to winds with corresponding deterioration in services and heavy losses to railway funds.

In order to bring back smooth running of railway services following amendments are proposed.

Amendments: Chapter VIII A- "Passengers' Amenities"

16. Cl.58A(1): Every carriage of a train, wherein reserved accommodation (either a berth or a seat) is provided, shall always be attended by a railway servant and if needed, by a member of Railway Police Force. Such police member shall assist the railway servant in discharging his duties.

(2): The railway servant shall be responsible for allocating accommodation to bonafide passengers and to prohibit others from entering the carriage after capacity of the carriage being full. The name of the railway servant shall be disclosed on the reservation chart and on a board in the carriage.

(3): The railway servant shall be responsible for maintaining amenities provided in the carriage and for its due cleanliness.

(4): The railway servant shall not leave his carriage in transit.

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17. Clause 58B:(1) Railway Administration shall provide sheds, drinking water, toilets, benches, urinals on every railway station and it shall provide waiting halls on stations where long distance traffic is sizable. Seperate facilities shall be provided for females.

(2) The railway servant in charge of the station shall be responsible for proper maintenance of amenities so provided and for general cleanliness of his station.

18. Clause 58C : Railway Administration shall provide railway police in adequate numbers on every railway station where traffic is sizable and the officer in charge of such police shall be responsible for maintenance of law and order within the area of such station. In addition, it shall be his duty to assist the officer in charge of railway station when his services are required by the said officer.

19. Clause 58 D : Where it is proposed to provide non departmental catering services on any railway station, it shall be done by zonal administration by inviting tenders requirements of which shall be determined by prescribed rules.

20. <u>Insertion of new Clause 58 E</u> :

Inspite of the declaration of the Constituent Assembly

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that "the general tax payer shall have the status of the sole share holder in the railway undertaking" the Bill has vested total control of Railways in the Central Government. In order to have semblance of peoples participation in Railways following Committees are arbitrarily appointed at present at different times.

1) National Railways Users' Consultative Committee.
2) Zonal Railways Users' Consultative Committee.
3) Divisional Railways Users' Consultative Committee.
4) Suburban Railways Users' Consultative Committee.

The functions and powers of these Committees are not well defined. Their decisions are not binding on railway authorities. Their existance and funetioning depend entirely upon will and whims of railway administration.

It has become, therefore, necessary to have real participation of citizens in areas where railway users are affected and their recommendations should generally be followed and in case of disagreement reasons should be given by concerned officers. Hence these Committees should be brought into existance statutorily and their functioning should be regulated by rules. Hence following amendment is proposed to achieve these objectives.

Amendment

Clause 58 E (1) There shall be consultative Committees of railway users and associations at (i) National, (ii) Zonal, (iii) Divisional and (iv) Suburban levels. The

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Committees shall make recommendations to the railway administration regarding improvements in railways traffic and shall get redressed grievances of railway users, both at appropriate levels of such Committees.

(2) The Central Government shall make rules for appointments and functioning of such Committees.

21. Clause 77

Add the following as sub-clause (iv)

(iv) The railway administration can take steps mentioned in sub-clauses (i) to (iii) only after giving notice and hearing to the consignee or the endorsee.

Clause 77

Delete 2nd proviso to sub-clause (1) as it vests arbitrary power in the railway administration.

22. Clause 81

In Sub-clause (3), for the words "seven days", substitute "fourteen days".

23. Clause 82

In sub-clause (2)(b) for the words "seven days", substitute "fourteen days".

24. Clause 88

In sub-clause (1) for the words "seven days", substitute the words "fourteen days".

..13..

25. Clause 122

(i) For sub-clause (2) substitute the following new sub-clause :

(2) The liability of Railway administration under this Clause shall in no case be less than Rs.50,000 and more than Rs.2,00,000/- in case of death of any one person or his being incapacitated, depending upon his earnings till his completing 58 years of age.

(ii) In sub-clause (3) add the following words at the end:

"or on railway track or at any other railway premises".

26. Clause 132

In sub-clause (2) for the words "ninety days", substitute the words "one hundred and eighty days".

Note: Most of claimants for compensation come from States other than the State in the High Court in which an appeal is to be filed. More time to file an appeal will certainly help them.

Amendments to the Railway Protection Force Act, 1957 as Chapter XIV A in this Bill :

At present there are two police forces working in Railways. One is a force established under The Railway Protection Force Act 1957 to protect Railway property throughout India. Other force is a State Police force loaned to Railways to maintain law and order and security of passengers. First is a Central

Police Force and other is a State Police Force. Due to different functions exercised by these two authorities within the same area of operation, there is a confusion which is exploited by bad elements to loot and rob passengers on a large scale.

In order to bring cohesion within these two forces following amendments are proposed to The Railway Protection Force Act, 1957, in this Bill.

Amendments

27. Clause 141 A : Any State Police Force loaned to the Railways or working for Railways, shall be deemed to be the Railway Protection Force and shall exercise its powers and functions.

28. Clause 141 B : The Railway Protection Force shall exercise, in addition, all powers and functions of State Police Force.

(Note : This amendment will have to be enacted under Article 249 of the Constitution).

29. Clause 141 C : Both the forces will be responsible for protecting passengers and their property and property of railways while travelling and for maintaining law and order within Railways.

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30. New Clause for substitution of Clause 209

The Bill proposes to vest in the Central Government power to make rules under various provisions of the said Bill. The rules so framed will regulate and control traffic as such will affect railway users. Before rules are made, published in gazette and brought into force, opportunity should be given to railway users to offer their views on draft rules. With this object in view, it is recommended that - procedure laid down by Section 23 of the General Clauses Act 1897 should be applied to rule making power in this Bill. Following amendment will serve the purpose.

Amendment

Clause 209: The rules and orders made under any provision of this Act shall be subject to previous publication. In addition to publication of draft rules and orders in Gazette of India the Central Government shall give notice of such publication in news papers and make available copies of draft rules and orders to public.

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31. Amendment to the Schedule

Value of liability of Railways of animals fixed u/section 102(1) read with the Schedule is very low. It should be increased as under :

Amendment :

Animal	Prescribed value per head.	Proposed value per head.
Elephants	Rs.3,000	Rs.10,000/-
Horses	Rs.1,500	Rs. 4,000/-
Milch Cattle	Rs.400	Rs.1,500/ Rs.3,000
Birds	Rs.30	Rs.50

32. **Chapter XV**

Penalties and Offences

The Bill includes about 40 offences including some new offences. A comparative table of offences included in the Bill 1986 and Railway Act 1890 is enclosed herewith. It reveals that convictions in the forms of imprisonment and penalties are enhanced disproportionately in the Bill making it a mini Indian Penal Code of 1986. Attention is invited to following items in the comparative table:

Sr.Nos:1,3,6,7,9,10,15,17,18,23,24,25,27,30,31,36,37,38.

It is to be noted that Railways' primary aim is to run trains smoothly; It is not a police department of a government whose main function is to maintain law and order and to launch prosecutions for that purpose. It will be unwieldy to manage and control nationwide prosecutions and to handle them efficiently and successfully to logical end. Hence punishments should be bearable and yet deterent enough as not to tempt a person to commit the offence again.

It is also to be noted that a guilty person, instead of undergoing regours, stresses and strains of criminal law will settle issues with railway servants outside courts thereby breeding large scale corruption and loss to railway revenue.

Taking into consideration the proclamation of the Constituent Assembly on 29.12.1949 that the tax payer is the sole share holder, the financial capacity of common man and nature of offences, it is desired that the Select Committee, who represents the Parliament and the tax payer should undertake the exercise of redrafting the Chapter XV making it well balanced with other provisions of the Bill.

33. In Sr.26 (Clause 169) Entering carriage reserved for females minimum inprisonment of 10 days should be provided.

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Sr. No.	Offence	Provision		Imprisonment		Fine	
		Bill 1986 Clause	Act 1890 Section	Bill 1986	Act 1890	Bill 1986	Act 1890
1	Fradulently travelling without ticket	142	112	6 months	3 months	Rs.1000/-	Rs.100/-
2	Travelling without proper ticket or over travelling	143	113	1 month; minimum of 10 days	1 month;		
3	Needlessly interferring with communication in a train	146	108	1 year	3 months	Rs.1000/-	Rs.250/-
4	Penalty for transfer of a ticket.	147	114	3 months	3 months	Rs.500/-	Rs.250 or
5	Unauthorisedly supplying of tickets	148	114A	3 years	3 years	Rs.1000/-	Rs.1000/-
6	Prohibition on hawking	149	120A	1 year;	-	Rs.2000/-	Rs.250/- minimum of Rs.50/-
7	Drunkenness	150	120	6 months		Rs.500/-	Rs.50/-
8	Obstructing railway servant in his duties.	151	121	6 months	6 months	Rs.500/-	Rs.500/-
9	Trespass	152	122	6 months	1 month	Rs.500/-	Rs.50/-
10	To make false statement in application for compensation.	153	105	3 years	1 year	unspecified fine	Rs.500/-

Sr. No.	Offence	Provision		Imprisonment		Fine	
		Bill 1986 Clause	Act 1890 Section.	Bill 1986	Act 1890	Bill 1986	Act 1890
11	Making a false claim for ccmoensation.	154	106	3 years		Unspeci-fied fine.	₹.150/-
12	Maliciously wrecking a train	155	126	Imprison-ment for life cr 10 years and mini-mum of 3 years	Imprison-ment for life or 10 years and mini-mum of 3 years		
13	Destruction of railway oroperties	156	126A	10 years	10 years		
14	Maliciously hurting passengers travelling by railways.	157	127	Imprison-ment for life or 10 years	Imprison-ment for life or 10 years		
15	Endangering safety of railway passengers.	158	101	5 years and minimum of 6 months	2 years		₹.500/-
16	- do - by rash act	159	129	1 year	1 year	Unspeci-fied fine	Unspeci-fied fine.
17	Entering into a compartment reserved.	160	109			₹.200/-	₹.20/-

18	Entering carriage in motion	161		1 month		Rs.50/-	
19	Travelling on roof or on engine	162		3 months & minimum of 10 days		Rs.500/- & minimum of Rs.100/	
20	Altering or defacing a ticket	163	116	3 months	3 months	Rs.250/-	Rs.250/-
21	Contravention of Chapter XIV	164				Rs.500/-	
22	Disobedience of drivers of vehicles	165	123	1 month		Rs.100/-	Rs.20/-
23	Opening or breaking a level crossing gentle.	166	124	3/5 years			Rs.50/-
24	Cattle trespass	167	125	-	-	Rs.30/-per each head of animal	Rs.5/-per each head of animal
25	Negligently crossing unmanned level crossing	168		One year			
26	Entering carriage reserved for females	169	119			Rs.200/-	Rs.100/-
27	Giving false account of goods	170	106	-	-	Rs.500/- for each quintel	Rs.150/-for each quintel
28	Unlawfully bringing dangerous goods on railways.	171	107	3 years & minimum of 1 month			Rs.100/-
29	Unlawfully bringing offensive goods on railways.	172	107	-	-	Rs.500/-	Rs.500/-
30	Defacing public notices	173	111	one month	-	Rs.250/-	Rs.50/-

Sr. No.	offence	Provision		Imprisonment		Fine	
		Bill 1986 Clause	Act 1890 Section	Bill 1986	Act 1890	Bill 1986	Act 1890
31	Smoking	174	110	-	-	Rs.100/-	Rs.20/-
32	Travel on railway with infectious disease	175	117	-	-	Rs.100/-	Rs.20/-
33	Commission of offence by children.	176	130	-	-	Rs.50/-	Rs.50/-
34	Penalty for drunkenness	180	100	One year	One year	Unspecified fine	Unspecified fine.
35	Abandoning train without authority.	181	100A	Two years	Two years	Rs.500/-	Rs.500/-
36	Obstructing running of train	182	100B	Two years	Two years	Rs.2000/-	Rs.500/-
37	Endangering safety of persons	183	101	Two years	Two years	Rs.2000/-	Rs.500/-
38	Obstructing level crossing	184	104	-	-	Rs.100/-	Rs.20/-
39	False returns	185	105	One year	One year	Rs.500/-	Rs.500/-
40	Making a false report by servant	186		Two years		Rs.1000/-	
41	Allowing person suffering from Infectious disease	187				Rs.100/-	
42	Ommission to give notice of accident.	188	103			Rs.50/-	Rs.50/-

MRINAL GORE
(President)

P.B.SAMANT
(Vice-President)

CHANDRAKANT VORA
(Member)

CHIMANBHAI GANDHI
(Member)

JITENDRA SALOT
(Member)

MEMORANDUM

Containing

COMMENTS AND SUGGESTIONS

ON

BILL NO. 46 OF 1986

(The Railways Bill, 1986)

Submitted To

THE JOINT COMMITTEE OF PARLIAMENT

BY

(1) THE SIDING OWNERS & COMMERCIAL
RAILWAY USERS ASSOCIATION. PUNE
(Registered)

AND

(2) THE DECCAN PASSENGERS ASSOCIATION. PUNE
(Registered)

1206-B/21, Shivajinagar,
PUNE 411 004

18th January 1986

Founder :
S. N. AWEKAR,
Advocate
Pune.

General Secretary :
A. S. AWEKAR,
B. Com., LL. B., Advocate
Pune.

I N D E X

S.No.	Clause No.	Marginal Note of the Clause	Page
1	-	Letter addressed to The Senior Legislative Committee Officer, Lok Sabha Secretariat, (Committee Branch-II) Parliament House Annexe, New Delhi 110 001, dated 18-1-1987	(i)
2	-	Preface to the Memorandum by Shri.S.N.Awekar and Shri.A.S.Awekar	
3	34	Complaint against Rly. Adm.	1
4	42(1)	Reliefs which the Tribunal can Grant ..	1
5	63(2)	Railway Receipt	2
6	77(1)	Weighment of Consignment on the Request of Consignee or Endorsee ..	3
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8	93	Goods Carried in Open Vehicles.. ..	5
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12	97(2)	(Not Named)	10
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14	197	Protection of Action Taken in Good Faith	11
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16	51	Provision Against Transfer of Certain Tickets	13
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SIDING OWNERS & COMMERCIAL RAILWAY USERS ASSOCIATION (Registered)
DECCAN PASSENGERS ASSOCIATION (Registered)

1206/B-21, Shivajinagar,
PUNE 411 004.

18th January 1987.

To
The Senior Legislative Committee Officer,
Lok Sabha Secretariat,
(Committee Branch-II),
Parliament House Annexe,
New Delhi 110 001.

Sub.: Joint Committee on the Railways Bill, 1986.
Ref.: Your letter No.6/4(1)86/CII dated 7th June 1986.

Dear Sir,

Your above letter together with copies of the Parliament Bill No.46 of 1986 and the list of members of the Joint Committee was received here but was wrongly delivered by the Postman to Shri. Ramkrishna More, M.P. (L.S.) on 12-1-1987, whose office is just situated in the same building in which the undersigned have their own. Shri. Ramkrishna More, M.P. was kind enough to hand over to us the above letter together with its enclosures on 15-1-1987.

Under the circumstances, you will appreciate how difficult it is for us to prepare our memorandum and to despatch it to you so as to reach your office on or before 21st January 1987.

We have hurriedly drafted and finalised our Memorandum and is being despatched to you in 75 copies by registered post ack.due. Kindly acknowledge.

We have specially to mention here that the undersigned do wish to give our oral evidence before the Joint Committee. We have to explain a lot of things contained in and outside our Memorandum touching the subject. For want of time, we are afraid, we have not done full justice to the cause and as such we do desire to fill in the deficiencies by means of oral evidence, which we would like to give in further details in a heart-to-heart talk with the Joint Committee. We make it a point to appear before the Joint Committee on the appointed day, no sooner we receive an invitation for the purpose.

Awaiting the invitation,

Yours faithfully,

(S.N.Awekar)
Founder

(A.S.Awekar)
General Secretary
For SOCRU Association, Pune,
&
For Deccan Passengers Assn., Pune.

P R E F A C E

It is a regretful state of affairs that the entire provisions in Chapter IX (Carriage of Goods) and Chapter XI (Responsibilities of Railway Administrations as Carriers), Clauses 154, 196 and 197 appear to have been drafted solely with a view to keep the Railways in an absolute dominating position and the Railway Users at their mercy!

The Chapters and Clauses referred to above create absolute rights and enabling provisions in favour of Railways and impose liabilities, disabilities, inabilities and handicaps on the Commercial Railway Users. These provisions, in some cases, are meant to get the Railways excused against their wrongs and show every sort of distrust towards the other side. The provisions forget that in the matter of the Carriage of Goods the Railways and Railway Users are 'contracting parties' who need justifiable protections under law.

The provisions in the said Chapters, one wonders, seem leading us to the 19th Century when the Nation is preparing to gallop towards 21st Century. Some of the provisions are worse than those which existed during the British Raj.

Under the above circumstances, our Associations consider it their duty to persuade the 'Joint Committee of the Parliament' to see that the Commercial Railway Users are not 'crushed'.

We are conscious of the prolixity of our memorandum and of its possibility of being a 'bore' to the readers. However, we do maintain that the Indian Railways Act is one of the most important Acts. Our memorandum, therefore, needs to be carefully looked into.

- S. N. Awekar
- A. S. Awekar

PUNE,
18th January 1987.

MEMORANDUM SECTION (A)
GOODS TRAFFIC

BILL CLAUSE : 34

Marginal Note: COMPLAINT AGAINST RLY. ADM.

Relevant Text: Any complaint that a Rly. Adm. -

(a) is contravening the provisions of Section 68; or

(b) is charging for the carriage of any commodity between two stations a rate which is unreasonable; or

(c) is levying any other charge which is unreasonable may be made to the Tribunal.

Similar Provision

RLYS ACT SECTION: 41(1)

Relevant Text: The same and identical.

OUR SUGGESTIONS:

The words "is contravening", "is charging", "is levying" may be replaced by words "has been contravening", "has been charging", "has been levying" respectively.

SHORT REASONS:

The present continuous tense used in Section 41(1)(c) was interpreted by the Tribunal as to bar a relief to be given to the complainant for the charges levied prior to the date of the filing of the complaint. This has, so far, enabled the Railways to swallow the charges billed or recovered prior to the date of the complaint. This is in contravention of the principles of natural justice, equity and good conscience. A via media provision should therefore be made which we have suggested while dealing with Bill Clause 42 below.

BILL CLAUSE : 42(i)

Marginal Note: RELIEFS WHICH A TRIBUNAL MAY GRANT.

Relevant Text: In the case of any complaint made under clause (b) or clause (c) of Sec.34, the Tribunal may -

(i) fix such rate or charge as it considers reasonable from any date it may deem proper, not being a date earlier to the date of the filing of the complaint;

Similar Provision in Railways Act 1890, Section 41(3):

Relevant Text: "In the case of a complaint under clause (b) or clause (c) of sub-section (1), the Tribunal may fix such rate or charge as it considers reasonable."

OUR SUGGESTION:

For the words "not being a date earlier to the date of the filing of the complaint", may be replaced by words "not being a date earlier to the date two years prior to the date of the filing of the complaint".

SHORT REASONS:

An attempt is made in clause 42(i) to give effect to the interpretation given by the RRT to the phrase which is in present continuous tense referred to in Section 41(i) of the Railways Act 1890. The suggestion is the sequel of our observation we had made in the "SHORT REASONS" under clause 34.

BILL CLAUSE : 63(2)

Marginal Note: RAILWAY RECEIPT

Relevant Text: 63(2). A railway administration shall not be responsible for the correctness of the weight, description or classification of goods or the number of packages mentioned in the railway receipt unless a certificate to that effect is recorded in the railway receipt by a railway servant authorised in this behalf."

Similar Provision : - Nil in Railways Act, 1890 exists in Rule 115, Goods Tariff Part I Vol.I :

Marginal Note: RIGHT TO CORRECT CHARGES.

Relevant Text of the Rule 115: "The weight, description and classification of goods and quotation of rates as given in the Railway Receipt and Forwarding Note are merely inserted for the purpose of estimating the Railway Charges and the Railway reserves the right of re-measurement, re-weighment, re-classification of goods and re-calculation of rates and other charges and correction of any other errors at the place of destination and of collecting any amount that may have been omitted or undercharged. No admission is conveyed by a Railway Receipt that the weight as shown therein has been received or that the description of the goods as furnished by the consignor is correct."

OUR SUGGESTION:

Clause 63(2) should either be dropped in toto or be re-drafted as suggested hereinunder:-

"63(2) - A railway administration shall be responsible for the correctness of the weight and number of packages forming the consignment mentioned in the railway receipt unless proved otherwise."

SHORT REASONS:

The clause 63(2) finds its origin in the continuously long standing misuse of Rule 115 of the Goods Tariff. The justifiability of the purport for which Rule 115 was framed was quite correct. But taking an undue advantage of a stray sentence in the Rule 115, namely, "No admission is conveyed by the Railway Receipt that the weight as shown therein has been received ..... "

This sentence has a reference to the reservation of a right of reweighment the Railway assumed to have as stated in the earlier part of the Rule 115. There has been nothing objectionable if the Railway would re-weigh the consignment at the destination in order to ensure the correct levy of freight charges.

The Railway, however, started and continued to say that the weight shown in the R/R was also not binding for other purposes also. This unwarranted use of the said sentence the Railway went on further to deny the shortages from consignments found less in weight than the one shown in the R/R.

This position further gave an impetus to the forwarding stations to purposely fail to weigh the wagon-load consignments and also to count the articles loaded therein.

This position furthermore gave birth to the issue of "said to contain" R/Rs.

This chain of misfortunes is being legalised by enacting clause 63(2). Hence the above suggestion is made.

BILL CLAUSE : 77(1)

Marginal Note: WEIGHMENT OF CONSIGNMENT ON THE REQUEST OF THE CONSIGNEE OR ENDORSEE.

Relevant Text: A railway administration may, on a request made by the consignee or endorsee, allow weighment of the consignment subject to such conditions and on payment of such charges as may be prescribed:

Provided that except in cases where a railway servant authorised in this behalf considers it necessary so to do, no such weighment shall be allowed in cases of goods booked at owner's risk rate or goods which are perishable and are likely to lose weight in transit:

Provided further that no request for weighment of consignment in wagon load shall be entertained under this sub-section, if

(a) weighment is not feasible due to congestion in the yard or other operational reasons; or

(b) in the opinion of a railway servant authorised in this behalf, circumstances exist which do not warrant such weighment."

Similar Provision: - Nil in the Rys Act, 1890
- exists in Rule 118, Goods Tariff Part I Vol.I:

Marginal Note: REWEIGHMENT OF CONSIGNMENTS AT DESTINATION.

Relevant Text: Railways do not undertake to weigh consignments at destination stations as a matter of course. Such weighments at destination stations can only be considered in exceptional cases when the condition of the consignment or package warrants this."

OUR SUGGESTION:

Section 77(1) may be completely dropped.

SHORT REASONS:

The sum total of the contents of clause 77(1), if the railway authorities so mean, would enable them to refuse reweighment, whatever justifying circumstances there may exist to justify the same.

The combined effect of clause 63(2) and 77(1) is to make it impossible for the consignee to prove the fact of shortage, even if it factually exists. This is an outright injustice. Hence the abovementioned two suggestions.

Note: My Article captioned as "BILL ATROCITY NO. 2" with a head-line "BILL WILL MAKE R/R A DREADFUL DOCUMENT" (ANNEXTURE NO.2) may be referred to.

BILL CLAUSE : 72

Marginal Note: PASSING OF PROPERTY IN THE GOODS COVERED BY RAILWAY RECEIPT.

Relevant Text: "The property in the consignment covered by a railway receipt shall pass to the consignee or the endorsee, as the case may be, on the delivery of such railway receipt to him and he shall have all rights and liabilities of the consignor."

OUR SUGGESTION:

This entire clause should be dropped.

SHORT REASONS:

The status of the Railway Receipt as defined in Section 2(4) of the Sale of Goods Act, 1930 is a sufficient provision to deal with the delivery of goods at the destination station.

Note: My Article (Annexture 2) may also be referred to.

Further Suggestion:

Clause 73, which has a reference to clause 72, also stands ineffective and as such may be dropped.

BILL CLAUSE : 93

Marginal Note: GOODS CARRIED IN OPEN VEHICLES.

Relevant Text: "When any goods which, under ordinary circumstances, would be carried in covered vehicles or vessels and would be liable to damage if carried otherwise, are, at the request of the Consignor recorded in the forwarding note, entrusted for carriage by railway in open vehicles or vessels, or in vehicles or vessels which are defective or not fully covered, the railway administration shall not be responsible for any destruction, deterioration or damage which may arise by reason of the goods being so carried.

Similar Provision: - in Section 75-A I.R.Act, 1890

When any goods which, under ordinary circumstances, would be carried in covered vehicles or vessels and would be liable to damage, if carried otherwise, are at the request of the sender or his agent accorded in the forwarding note, tendered for carriage by railway in open vehicles or vessels, the railway administration shall not be responsible for any destruction, deterioration or damage which may arise only by reason of the goods being so carried.

OUR SUGGESTIONS:

The clause 93, for the reasons stated under the "Short Reasons" hereinunder may be re-drafted as follows:-

"Where any goods which, under ordinary circumstances, would be carried in open wagons, and would be liable to damage if carried otherwise, are, at the request of the consignor recorded in the forwarding note, entrusted for carriage by railway in open wagons, the railway administration shall not be responsible for any damage which may arise only by reason of the consignment being so carried."

SHORT REASONS:

(1) Replacement of the words "vehicles" or "vessels" by a word "wagons" will be appropriate as words 'vehicle' and 'vessel' are never used in relation to carriage of goods by railway. It is only the word 'wagon' is used everywhere, in rules, in correspondence etc. There had never been any occasion where any dispute had arisen because word 'wagon' only was used and "vehicles" or "vessels" were not used. There is no purpose in keeping the words which are 'out-dated' and which serve no purpose at all.

(2) The insertion of the additional words "or in vehicles or vessels which are defective or not fully covered" is vehementally to be deplored.

* The existence of 'open wagons' is the natural state of affairs whereas the "defective wagons" or "wagons not fully covered" are the result of man-made failures. The consignor, in preferring to allow his goods to be carried in open wagons, is always in a position to know the 'calculated risk' but not in the case of "defective" wagons or "wagons not fully covered".
* The inevitable ugly effect of the permission to use 'defective' wagons etc. with a statutory approval will end in the deterioration of the 'repairs' work by the administration.
* In rainy season leaky wagons will be freely used. By virtue of the new provision in question incorporated in the clause 93, the Railways will have the satisfaction of depriving the consignees of their claims for the 'damage by wet'; but they have no idea of what tremendous loss the nation may suffer in respect of damage, destruction or deterioration that would be caused to commodities like food-grains, cement, perishables, fertilisers, sugar, and the like, by carrying them in defective or leaky wagons.
* The Railways are under an obligation to cover open wagons by means of tarpaulines; but no such precaution can be taken in the case of defective wagons. In the result, with eyes open, everybody will be a silent spactator to watch these commodities going to dogs!

(3) The word "only" in the last sentence of the Section 75-A appears to have been deliberately omitted in the last sentence of Clause 93. By making this omission, it appears, the scope of exemption from the responsibility of Railways is enhanced which is uncalled for. The word "only" should be reinstated.

BILL CLAUSE : 94

Marginal Note: DELAY OR DETENTION IN TRANSIT.
Relevant Text: "A railway administration shall not be responsible for the loss, destruction, damage, or deterioration of any consignment proved by the owner to have been caused by the delay or detention in their carriage, if the railway administration proves that the delay or detention arose for reasons beyond its control or without negligence or misconduct on its part or on the part of its servants."

Similar Provision: Section 76 of I.R.Act, 1890
Marginal Note: RESPONSIBILITY FOR DELAY OR DETENTION IN TRANSIT.
Relevant Text: "A railway administration shall be responsible for loss, destruction, damage, or deterioration of animals or goods

proved by the owner to have been caused by delay or detention in their carriage, unless the railway administration proves that the delay or detention arose without negligence or misconduct on the part of the railway administration or any of his servants."

OUR SUGGESTIONS:

Original form of Sec.76 should be reinstated.

Observations:

In changing the form of the clause, the Ministry of Railways wants a mental satisfaction by getting the words "shall not be responsible" in place of the words "shall be responsible". Even though the form of the clause is different from the one of Sec.76 of the Act, there is no change in substance.

BILL CLAUSE : 96

Marginal Note: GOODS CARRIED AT OWNER'S RISK RATE.

Relevant Text: Notwithstanding anything contained in Section 91, a railway administration shall not be responsible for any loss, destruction, damage, deterioration or non-delivery in transit, of any consignment carried at owner's risk rate from whatever cause arising, except upon proof that such loss, destruction, damage, deterioration or non-delivery was due to negligence or misconduct on its part or on the part of any of its servants.

Similar Provision: Section 74(3) I.R.Act, 1890

"When any animals or goods are deemed to have been tendered to be carried or are carried at the owner's risk rate, then, notwithstanding anything contained in Section 73, the railway administration shall not be responsible for any loss, destruction, damage, deterioration or non-delivery, in transit of such animals or goods from whatever cause arising, except upon proof that such loss etc. was due to negligence or misconduct on the part of the railway administration or any of his servants.

There is a proviso to this Section 74(3) which is incorporated in Section 76-F of the Act which runs as follows:-

Text of Section 76-F:

Its Marginal Note: BURDEN OF PROVING MISCONDUCT IN CASE OF NON-DELIVERY OR PILFERAGE IN TRANSIT OF GOODS CARRIED AT OWNER'S RISK RATE.

"76-F. Notwithstanding anything contained in Section 74, -

(a) Where the whole of a consignment of goods, or the whole of any package forming part of a consignment, carried at owner's risk rate, is not delivered to the consignee ..... etc., or

(b) Where, in respect of any consignment of goods or of any package ..... it is pointed out to the railway administration on or before delivery that any part of such consignment or package had been pilferred in transit, the railway administration shall be bound to disclose to the consignor how the consignment or package was dealt with throughout the time it was in its possession or control, but if negligence or misconduct on the part of the railway administration or any of its servants cannot be fairly inferred from such disclosure, the burden of such negligence or misconduct shall lie on consignor."

It is a matter of great concern that this proviso as contained in Section 76-F of the I.R.Act, 1890 has not found place in the BILL.

OUR SUGGESTION:

Section 76-F of the I.R.Act 1890 should be reinstated in the Bill.

SHORT REASONS:

The proviso contained in Section 76-F, it may be pointed out, initially came into the Statute Book in the year 1924 as a result of the recommendations made by a committee appointed by the then Government of India in the year 1922. Without this proviso, the railway law between the years 1907 and 1924 was the same as is contemplated by the Bill.

Prior to 1907, the "owner's risk rate" law relieved the Railway from all responsibility for any loss of or damage to goods from any cause whatever. In 1907, as a result of representations from mercantile community the law was revised and the Railway was made liable "for the loss of complete consignment due to WILFUL NEGLECT". (T.V.Seshagiri Ayyar Committee Report, 1922, Para 14.)

In para. 20 of the Report, the Committee recommended to include in the "owner's risk rate" law which is ad verbum the same as contained in Section 76-F of the I.R.Act, 1890.

One of the reasons given to make the above recommendations as appearing in Para. 15(ii) of the Report is as follows:-

"15(ii): It is unfair to place on the consignor the burden of proving that loss is due to wilful neglect (now negligence or misconduct) on the part of the Railway Administration or its servants, as it is practically impossible for him to prove it."

By omitting Section 76-F, the Bill has now adopted the law which was in force in 1907 and which was condemned by mercantile community and the Committee appointed by the then British Govt.

Hence the suggestion to reinstate Section 76-F of I.R.Act 1890 in the Bill.

In this context, my Article captioned as "BILL ATROCITY NO.1" with a head-line as "OWNER'S RISK RATE LAW WILL BE OPPRESIVE" may be read.

BILL CLAUSE : 97(1)

Marginal Note: GOODS IN DEFECTIVE CONDITION OR DEFECTIVELY PACKED.
Relevant Text: Notwithstanding anything contained in the foregoing provisions of this Chapter, where any goods entrusted to a railway administration for carriage -

(a) are in a defective condition as a consequence of which, they are liable to damage, deterioration, leakage or wastage; or

(b) are either defectively packed or not packed in such manner as may be prescribed and as a result of such defective or improper packing are liable to damage, deterioration, leakage or wastage,

and the fact of such defective or improper packing has been recorded by the consignor or his agent in the forwarding note, the railway administration shall not be responsible for any damage, deterioration, leakage or wastage or for the condition in which such goods are available for delivery at destination.

Similar Provision: exists in Sec.77(1) I.R.Act, 1890.

It is ad verbum the same as of Clause 97(1) reproduced above except that, after the end of the Clause 77(1) there is a comma after the last word 'destination' and the following sentence added thereafter:-

"except upon proof of negligence or misconduct on the part of the railway administration or of its servants."

OUR SUGGESTION:

The above-mentioned sentence which existed in Sec.77(1) must be added after the end of Clause 97(1).

SHORT REASONS:

Law as regards the defective condition or defective or improper packing upto the year 1924 was that, in the case of such goods the Railway was relieved of "all responsibility for the condition in which the goods may be delivered to the consignee at the destination and for any loss arising from the same".

The T.V.Seshagiri Ayyar Committee 1922, after having considered the ill-effects of the absolute exemption afforded to the Railway, suggested and the then Government of India accepted its recommendation to add the following sentence:

"except upon proof that such loss arose from the misconduct on the part of the Railway Administration's servants".

This Law which contained in the then Risk-Note "A" prior to 1924 and subsequent to 1924 i.e. after the recommendations of the said Committee were incorporated in the revised Risk-Note A, both the Risk Notes are enclosed herewith as Annextures (1) and (2).

The same law was adopted after Independence and is continued till this day.

By dropping the above sentence from Clause 97(1), it is a sorry state of affairs, the law will be of the same oppressive type as was prior to 1924 which was condemned by the said T.V.Sheshagiri Committee.

BILL CLAUSE : 97(2)

This entire clause 97(2) should be dropped as it serves no purpose. This has been an experience since the date it came into Statute Book in 1962.

BILL CLAUSE : 196

Marginal Note: BAR OF JURISDICTION OF CIVIL COURTS.

Relevant Text: "Save as expressly provided in this Act, no Civil Court shall have jurisdiction to entertain any suit or proceeding for anything done or action taken or any omission made by the Central Government, or by a railway administration, in violation or in contravention of any provision of this Act."

OUR SUGGESTION:

This entire clause should be dropped.

SHORT REASONS:

Is it that the provisions of law which is meant to be enacted as per the Bill No.46 of 1986 is only to be respected by the railway users only and is to be downtrodden by the Central Government or the railway administration? Are we in the age when it was said "King can do no wrong"? This provision is to be censured not only at its sight only but in substance also.

In this Bill no express provision for filing a suit is made, and that too indirectly, except in clauses 105 and 106 i.e. with respect to the cause of action based on "loss, destruction, damage, deterioration or non-delivery of goods entrusted to the Railway for carriage."

Is it that a suit for the refund of demurrage/wharfage charges is not to be filed against the Railways if they had collected them

in contravention or in violation of the provisions contained in the Act? Is it that a person will be prevented from filing any suit for the refund of over-charges? Is it that no suit can be brought for delay in transit, apart from the damage caused to the goods in clause 94? This clause 196 will create a havoc and as such must be dropped.

BILL CLAUSE : 197

Marginal Note: PROTECTION OF ACTION TAKEN IN GOOD FAITH.

Relevant Text: No suit, prosecution or other legal proceeding shall lie against the Central Government, any railway administration, a railway servant, or any other person for anything which is in good faith done or intended to be done in pursuance of this Act or any rules or orders made thereunder."

OUR SUGGESTION:

This clause must be dropped in toto.

SHORT REASONS:

There is no other term as deceptive as the term "in good faith" is. Its meaning, as defined in General Clauses Act Sec.3(22), is as follows:-

"A thing is done in good faith where it is in fact done honestly, whether it is done negligently or not."

Any mistake which a railway servant would commit will be defended as being the result of an act done or omission made "in good faith". Such mistakes at times, become responsible to create havocs.

This clause will encourage the railway servants to do or omit to do any nasty acts under the guise of having been done or omitted "in good faith".

What applies to railway servants does apply to the Central Government or any railway administration.

BILL CLAUSE : 154

Marginal Note: MAKING A FALSE CLAIM FOR COMPENSATION.

Relevant Text: If any person requiring compensation from a railway administration for loss, destruction, damage, deterioration or non-delivery of any consignment makes a claim which is false or which he knows or believes to be false or does not believe to be true, he shall be punishable with imprisonment for a term which may

extend to three years or with fine or with both."

OUR SUGGESTION:

This clause should be dropped in toto.

SHORT REASONS:

This clause, if turned into law, will do more harm than any good to the society. The Railways are not in a position to point out if there are any false claims made by any person, and if made, if they are paid. In any case, what is its percentage? During the course of 44 years of court practice, the author of this memorandum has not come across any such claim which was falsely preferred to the Railway. No doubt, there were cases of frauds but no cases were there based on nothing.

.....

MEMORANDUM SECTION (B)

COACHING TRAFFIC

BILL CLAUSE : 51

Marginal Note: PROVISION AGAINST TRANSFER OF CERTAIN TICKETS.

Relevant Text: "A ticket issued in the name of a person shall be used only by that person:

Provided that nothing contained in this section shall prevent mutual transfer of a seat or berth by passengers travelling by the same train;

Provided further that a railway servant authorised in this behalf may permit change of name of a passenger having reserved a seat or berth subject to such circumstances as may be prescribed."

OUR SUGGESTION:

Both the provisos may be dropped.

SHORT REASONS:

Proviso No.1 is redundant. There arises no difficulty in the mutual transfer of seats, or berths without transferring the tickets, because it is a matter of mutual understanding and desire on the part of passengers to accommodate or to adjust themselves just to suit their own conveniences. There is no need of any law for the purpose. If, however, any law is enacted it will create unnecessary implications.

As regards Proviso No.2, it will not only do no good to the travelling public but will give rise to an open black market. This proviso must be dropped.

The balance clause i.e. the one line clause will be the most appropriate one and will cover all good things and act against all evils.

.....

MEMORANDUM SECTION (C)
NEW SUGGESTIONS

D E M U R R A G E

A clause numbered as CLAUSE 94-A or renumbered as CLAUSE 95, other further clauses getting next numbers, should be incorporated in the Bill as below:-

"A railway administration shall be entitled to recover 'demurrage' provided it proves that the detention to the rolling stock was due to any fault or default on the part of the consignee, endorsee or consignor."

SHORT REASONS:

Kindly read our Article captioned as "Bill Atrocity No.3" written under a Head-Note "BILL KEEPS 'DEMURRAGE' ATROCITY INTACT". (Annexture No.3)

OPEN DELIVERY

The Clause 79 of the Bill makes a provision obliging the Railways "to give open delivery of a consignment when (a) it is arrived in a damaged condition or (b) shows signs of having been 'tampered with' and if the consignee/endorsee demands it. Unless the expression 'open delivery' is defined, the provisions of this Clause will always remain 'a bone of contention' destroying the very purpose of the 'open delivery'.

OUR SUGGESTION:

After Clause 79, the following sentence should be added:

"Explanation - 'Open delivery' shall mean and include a joint certification in writing made by the Railway on the one hand and the consignee/endorsee on the other, recording the factual condition offered for delivery with special reference to its weight, number of packages available for delivery and the damaged condition thereof."

.....

GUJARAT CHAMBER OF COMMERCE & INDUSTRY

(GUJARAT VEPARI MAHAMANDAL) MEMORANDUM NO. 5

President : Gautam Vimalbhai
Vice-President : Deepak Navanitlal
Hon. Secretary : Thakorbhai P. Amin
Jt. Hon. Secretary : Kumud C. Shah

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20th January, 1987.

Chairman,
Joint Committee on
The Railways Bill 1986,
Loksabha Secretariat,
(Committee Branch II),
Parliament House Annexe,
New Delhi-110 001.

Dear Sir,

Reg :Joint Committee on the Railways Bill-1986.

Chamber has carefully considered the provisions of The Railways Bill 1986 and have to submit herebelow our considered views and suggestions on some of the major aspects covered in the Bill.

(1) WIDE AND ARBITRARY POWERS :

An objective analysis of the provisions of the Railways Bill 1986 highlights that it gives not only wide and arbitrary powers to the railway administration but is also hasty and illconceived . The underlying objective of the Bill seems to be to arm the railways with more powers but relieve it of its vital obligations and responsibility and burden users with more of them. The revision of the Act presented a unique opportunity for a wholesale review of its purposes so that the interests of the users could be best served. It is rather unfortunate that this opportunity has been allowed to pass by as neither the customers nor the users have been consulted nor taken into confidence before introducing this Bill. In short, the Bill tends to be one sided tilted in favour of the Railway administration instead of being biased in favour of the community at large.

(2) UNRESTRICTED AUTHORITY :

The authority of the railway administration has been considerably enlarged in the Bill possibly under the presumption that the king can do no wrong. The role of the railway rates tribunal has been devalued in recent years. The tribunal has been made anaemic, unable to serve fully the objectives for which it was created viz. to safe-guard the users rightful interest. Moreover, role of consultation with the customers and users has already been devalued. Even the provisions of Section-68 have been aimed at enlarging the powers of the railways to indulge in discrimination in regard to fixation of rates and conditions attached to the demurrage which was absolutely prohibited in the Act. Such unrestricted authority can hardly be viewed with equanimity, especially when the expectations of the users are rising.

(3) RAILWAY RATES TRIBUNAL :

The jurisdiction of the Railway Rates Tribunal was curtailed in 1957 so that it does not have enough work now. Further curtailment on jurisdiction by extending the bar on jurisdiction to "Lumpsum Rates" will only reduce its work further besides permitting the railways to grant undue preference to certain classes. The jurisdiction of the Railway Rates Tribunal needs to be extended to classification or reclassification done by the Railway Board and should be extended to fixation of rates and conditions attached to wharfage and demurrage. Moreover, it should be empowered to grant relief to the users if it is considered just and reasonable. In short, the Railway Board's orders should not be unquestionable.

(4) PASSENGER FACILITIES AND AMENITIES :

It is indeed surprising that there is no Chapter on traffic facilities and amenities in the Bill whereas, there is one full Chapter devoted to this in the existing old Act. In the fast changing context, the people of India who are the owners of the Indian Railways naturally expect better facilities and amenities as a matter of right , particularly with regard to booking office, foot-overbridges, toilets, lighting, fans, seats reservations, refunds, maximum loadings for boggies grievences cell, safety and security etc. It is rather unfortunate that no legal obligation is cast on the railway administration on these aspects and hence, the passenger is left to the mercy of the railway administration on this count.

(5) PENALTY AND PUNISHMENT :

It is indeed curious that the new Clauses 142 to 188 have been devoted to the offences and penalties only. This gives an impression that the railways are now being used more by dishonest persons and offenders rather than the honest and innocent people. A railway user may now be arrested without warrant in cases like boarding a train from the wrong side or when in motion or travelling on the roof, a male entering in 'Ladies' only compartment and railway staff found drunk on duty or abondone a train without authority. These provisions not only overlook the reality of the situation but also enforcement thereof in practice would open up flood gates of corruption etc. without attainment of laudable objectives behind such provisions.

The prosecution has been provided for every offence in this Bill without taking into consideration

the location of Court and place of residence of passengers, time that the Court will take to dispose of the case, the number of trips the passenger will have to make, engage an advocate as he will have to face imprisonment and meet all the cost of facing this prosecution. Thus those passengers who cannot satisfy the railway employees that is beggars, unemployed the poor villagers etc. will be prosecuted without improving revenue or discipline. As a matter of fact, penalty and prosecution should be proportionate to the offences committed and as such, it calls for drastic revision and reconsideration.

(6) UNDESIRABLE PROVISIONS

It is rather distressing to note that some of the provisions in the new Bill are extremely harmful not only for the passenger movement but also for the goods movement by rail. e.g. auction of goods not cleared within 7 days of its reaching destination, without giving any notice at notified stations, authority given to the railway servant to transfer the reserve seats/berths, discrimination in respect of levy of fine in respect of a smoking passenger or a drunken railway servant, disproportionate penalty and punishment for a ticketless traveller etc. These and other anomalies in the Bill need to be rectified in the larger public interest so that avoidable inconveniences and hardships to the passengers as also for goods movement could be avoided.

(7) GLARING OMISSION :

The existing railway Act specifically provides for an obligation on the railway administration to maintain emergency chain, toilets and trains plying more than 60 kms, keep loading within specified maximum carrying capacity,

carry traffic within minimum running time etc. Surprisingly enough the new Railway Bill is absolutely silent on the essential necessities of public interest.

a) What is worse, there is absolutely no provision made in the Bill for the development of new railway lines in the Railway Bill. Hence, some legal obligation must be cast on the railways to meet nation's growing needs of rail transport particularly in newly developing areas and backward areas so that balanced, rapid and integrated development of the country could be achieved.

b) Proposed discontinuation of the practice by the railways to mention the distance in km. alongwith fares for the Station for which ticket has been issued under Clause 48 of the Bill is totally unwarranted and uncalled for and will create avoidable inconvenience and hardships to the passengers without any benefit to the Railway.

c) In the interest of safety and protection of the rail passengers and their property the Government should provide for a centralised police force under one authority for both passengers and railways through the new Bill and make railways hands stronger by providing stringent punishment to criminals. Absence of this provision in the new Bill can hardly be viewed with equanimity.

d) In addition to above, absence of provision of passengers facilities and amenities and non-statutory status to Consultative Committees will not help to serve either the interest of the passengers or of the railways. It is, therefore, desirable that specific provisions be made on this count.

Having outlined in brief our observations in general, we now submit herebelow our specific views and suggestions on certain important clauses of the Bill pertaining to goods traffic as it is difficult to make a thorough and critical study of all the 213 sections of the proposed Railways Bill.

1) Section 34 and 35-Jurisdiction of Tribunal

Whil e the authority vested in the Railway Board more or less is absolute, certain peripheral matters alone can be dealtwith by RRT which has made it an ineffective institute incap able of looking after customers interest. Thus the tribunal is expressly excluded from considering classification or re-classification done by the Railway Board, demurrage and wharfage charges notified by the Railway Board, lumpsum rates and passengers fares. It is evident, therefore, that under above sections the powers of the RRT are restricted to examining violation of section 68 which debars the railways from giving undue or unreasonable preference to a particular description of traffic and also to look into the reasonableness of reduced rates and levy of any other charge which is unreasonable. Since there is no basic jurisdiction as to why Railway Boards Orders on these subjects would be unquestionable, it is both essential and desirable that the powers of the RRT should be restored in the larger public interest as also in the interest of equity and justice.

2) Section 42-Relief to be granted by Tribunal :

It would be fair for the RRT to give relief from a date upto one or two years earlier to the date of filing the complaint or the occurrence of the cause which

ever is earlier. This is absolutely essential as compilation of data and preparation and submission of complaint takes time. In the absence of such a provision, there is no redress of the earlier period.

3) Section 63-Responsibility of Railway in case of RR.

While the section gives legal recognition to the railway to issue RR on acceptance of goods yet it fully absolves the railway administration for its responsibility regarding correctness of weight, description or classification or the number of packages as mentioned in the RR unless a certificate to the effect is recorded in the RR by a railway servant. It has to be realised that there is already reluctance on the part of railway to issue a clean RR and most of the RRs are qualified containing "Said to Contain" endorsement etc. This coupled with refusal to issue certificate introduced by this section will enable the railways to wash its hands of all liability. It is apprehended that the widespread use of this section will result in rejection of claim for compensation.Since this provision has created lot of discontent and frustration among the users and when there are already rules for mitigation of liabilities of railways, wholesale denial of responsibility is totally unjustified.

4) Section 68-Prohibition of undue Preference:

This section is important in as much as it debars the railways from giving any undue or unreasonable preference. This should have been retained and not deleted. Further the existing Act covered passenger as well as Parcel traffic whereas the advantage of this fundamental

rule has been confined now to goods traffic only. It is not clear why the railway chose to retain the power to give preference or advantage in respect of parcel and passenger traffic.

5) Section 71-Punitive charges for over loading a wagon.

Under this section a right is bestowed on the Railways to 'Reweigh' a consignment for recalculation of freight and to levy punitive charges over loading of wagons.

The imposition of penalty under this new section for loading of wagon beyond its permissible carrying capacity will create its own problems. This section does not indicate what the prescribed penalty charges would be. Thus the railways will be free to prescribe even very high rates. This has already started happening and the consignees of coal wagons have been called upon to pay abnormal freight for excess weight..

While it is appreciated that overloading of wagons should be checked in the interest of safety of wagons but at the same time it is highly necessary to ensure provision of weigh bridges at the collieries so that excess loading could be prevented. Moreover, the penalty for negligence in such cases should be recovered from the railways or collieries rather than the consignees as the latter have no control over the situation.

What is more distressing is the fact that this section besides being drastic and far reaching is one sided as well, as no provision for compensation in case of underloading of wagons has been made which is the prime need of the day.

The Box 'N' wagons are all being booked without being weighed and the railways charges freight on the basis of marked carrying capacity irrespective of whether a commodity can or cannot be loaded to the capacity marked. In fact, the railways had started charging for carrying capacity plus 2 tonnes in case of Box 'N' wagons. However, on public protest, the minimum weight for charge was reduced to carrying capacity which even was changed and rechanged by the Railways. Inspite of repeated representations to the Coal India Ltd. and Railway authorities, the fact remains that the abnormal shortage of coal in Box 'N' wagons of the order of about 15% still continues resulting in loss of the order of more than Rs. 60 crores per year to power houses and industries of Gujarat region. Since the trade and industry and the public at large are being unduly penalised for no fault on their part, it is suggested that reweighment of coal wagons should be permitted at the destination and compensation for the loss should be given to the consignees. It is also suggested to carry out scientific and impartial review of carrying capacity of Box 'N' wagons.

6) Section 76 & 77 :Power to measure or weigh consignment at the request of the consignee :

Under this section the reweighment of consignment will be entirely at the sweet will of the railway and the customer cannot obtain it even if he is prepared to pay the cost thereof. The railways also retains the right to refuse reweighment for operational reasons and when the concerned railway servant holds a contrary opinion. When there are many cases of heavy shortages in wagons the retention of such blanket powers will be prejudicial to the interest of trade and industry. When the person concerned is prepared to pay for reweighment charges some definite

guidelines be provided in the Act in this behalf so that summary denial could be avoided. Besides levy of demurrage charges should be dispensed with where request of reweighment is proved to be genuine and not frivolous. Besides in many cases no weighment is undertaken at the forwarding end and if reweighment at destination is also denied, then how the weight is to be found out has to be clearly specified.

(7) Section 78-Liability of Railway for wrong delivery :

This section goes against the customer as the railways do not assume any responsibility for wrong delivery of goods on the ground that the person concerned was not entitled thereto o r that the endorsement on RR was forged or defective. Such blanket protection to erring employees can only have the effect of encouraging inefficiency and mischief at the cost of customers which should be avoided.

8) Section 88(1)-Disposal of unremoved goods at Notified Stations:

This section provides for the auction of goods not cleared within seven days of its reaching the destination without any notice at notified Stations. This is in violation of the principles of natural justice. It is a matter of common knowledge that these days documents sent through Banks normally take 15 to 20 days more so when the documents are to be sent through the senders banks, whereas at many Stations the goods reach much earlier. Sometimes parties .. even take longer time to honour the documents. In such an event a party which had paid for such goods through banks will have in its hand a railway receipt of no value since the goods will have been auctioned by railways by then without any notice.

The question which would naturally arise under such circumstances would be as to whom the party should approach for the claim i.e. the consignor, the banker or the railways. Besides, this will open up a plethora of litigations with unscrupulous people cheating innocent parties in collusion with railway servants. As a matter of fact unscrupulous people would order goods by railways, deliberately delay payment of document through banks and yet acquire possession and property in the goods from railways at throw away prices.

The most obnoxious part of this provision is "without any notice" which is absolutely compulsory under the present Act under Section 55(2).

Moreover, railway receipt shall cease to be a document of any value by it self, thus contradicting the provisions of this very Bill making R.R. a negotiable instrument. No banker would advance moneys against RR the most common and safe form of bank credit today. As a result, it would virtually apply a severe break to the industrial activity of our economy which cannot be justified on any grounds.

It is, therefore, suggested that section 88(1) should be suitably amended by providing a minimum of one month's notice to the consignor or consignee. In fact, it is not desirable to penalise all and sundry for the fault of a few who abuse railway premises for storage purposes.

(9) <u>Section 93-Goods carried in Open Wagons:</u>

This section absolves the railway administration from liability in respect of goods carried in open wagons or defective covered wagons at the request of the consignor. This provision is unfair and unjust and the monopoly organisation like railways should not take undue advantage

of the disability of the consignors who are compelled to opt for open wagons under duress so as to ensure expeditious despatch of goods.

(10) Section 94- Delay or Detention in Transit:

This section absolves the railways of the responsibility for the loss, demurrage etc. caused by delay in transit if the delay was for reasons beyond its control. To penalise the user on this count is not fair as this would enable railway employees to reject claims and abridge their responsibility. More particularly the consignees of fruits and other perishables will be the worst victims as the claimants will not get anything under the pretext of this section.

(11) Section 96-Bookings at owner's risk:

Under this section the railways will be liable only of it is proved that the loss, demage etc. was caused due to negligence or mischief of railways or its servants. Shifting the burden of proof on the claimant is not at all justified as it will be extremely difficult for him to find out negligence or misconduct of the railways of its servants. The fact that the goods have not arrived or not arrived in time is itself a proof of negligence or misconduct. It is for the railways to defend and not for the consignee to prove the charge.

(12) Section 102- Monetary liability in respect of any consignment:

Under this new provision railways will be liable only upto a certain amount per unit of weight of respective commodities. For costlier goods extra payment will have to be made by the sender. Since no indication of new charge is given the result would be that the railways can impose and vary percentage at Will This needs to be specified.

(13) Section 104 & 105-Notice for claim of compensation and refund of over charge.

The new section requires a notice to be served for a claim and a suit against railways can be filed only if a notice under this section is served earlier. Thus claim on mere letter addressed to the railways will not work. This change will obviously result in rejection of claims on such grounds. Moreover, the refund has to be sought only from the railways to which payments has been made which will create enormous problems. It would have been more convenient to trade and industry and perhaps also to the railways to retain the old provision under which refund could be claimed for the forwarding or destination railways or the rail ways from which loss occured.

(14) Section 196- Bar of Jurisdiction of Civil Courts:

Under this section the jurisdiction of Civil Courts has been barred for proceedings in respect of certain action or omissions of the Central Government or the Railway administration except as permitted by the new Act. Thus, the only avenue of redress left to the users will be to go on knocking at the doors of the railways bureaucracy. Such denial of refress under the law of the land appears to be unwarranted and uncalled for in as much as it is against principles of natural justice.

In view of far reaching implications of the above Bill, it is highly essential and desirable that adequate time be given to the trade and industry as well as general public to study the implications of the above Bill and represent the matter before the Committee so that due justice can be ensured to the users of railways.

We are sure our views and suggestions will receive kind and symp athetic consideration of the Committee and necessary amendments , as suggested, will be made in the Bill.

A deputation of the Chamber desires to tender oral evidence before the joint Committee on the provisions of this Bill and hence, we shall feel much obliged if you kindly let us know suitable date, time and place so as to enable us to adjust our programme accordingly.

Thanking you,

Yours faithfully,

Gautam Vimalbhai)
President

ink/vrp

CONFIDENTIAL

LOK SABHA SECRETARIAT
(Committee Branch-II)

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JOINT COMMITTEE ON THE RAILWAYS BILL, 1986.

MEMORANDUM No. 6

(Comments/suggestions received from the All Kerala Railway Users' Association, Trivandrum)

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1. ACCIDENTS

Clauses 111 to 134 relate to accidents. While these clauses fully provide for the responsibility to conduct enquiries and to submit enquiry reports, they are silent on the question of payment of compensation to passengers who die or sustain injuries. In the Motor Vehicle Act, for instance, there are clear directions on the nature of accident compensation to be given both on an interim basis and on a final basis. Such awards of compensation are determined by Tribunals presided over by a person not below the rank of a District Judge. In the provisions relating to accidents in the Railways Bill Clause 122(2) alone mention the quantum of compensation. It merely says that the liability of the Railway Administration shall in no case exceed one lakh of Rupees in respect of any one person. This is not only vague, but inadequate.

It is necessary that the Bill provides for:

(a) a time limit within which compensation or relief should be given to person who die or sustain injuries.

(b) an adequate provision for determining the quantum of such compensation.

A detailed procedure has been prescribed for claims for compensation being considered by a Claims Commissioner. There is also provision for

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appeal to the High Court. These however are not adequate. It is necessary to provide that in the event of the death of a passenger, an interim relief of Rs. 15,000/- should be paid to his heir within three months of the date of the accident. So also where a person has sustained injuries, an interim relief of Rs. 7,500/- should be given within a period of three months. These are on the same line as provided in clause 92 A of the Motor Vehicle Act. Secondly, the maximum limit of rupees one lakh is far too inadequate. Compensation will have to be determined on the basis of several facts. In the case of the death of a person, his earning capacity, his expected longivity of life etc. should be taken into account and the family compensated on that basis instead of limiting the claim to Rs. 1 lakh. Every year cost of living keeps on going up. An amount of Rs. 1 lakh fixed now may be too small an amount after 4 or 5 years. In the circumstance, the following amendments are suggested:

(a) Delete clause 122(2) and renumber 122(3) as 122(2) Add the following as clause 130(3) and 130(4)

When a passenger dies as a result of an accident it shall be incumbent on the Claims Commissioner to pay an interim compensation of Rs. 15,000/- to the heir of the deceased person within three months of the date of the accident. Similarly in the case of a person who has sustained an injury, an interim compensation of Rs. 7500/- shall be paid to the person concerned within three months of the date of the accident. These amounts will be subject to upward revision from time to time by the Central Government taking into account the rise in cost of living.

130(4) While determining the ultimate amount of compensation in the event of the death of a passenger the Claims Commissioner shall take into account various factors like the earning capacity of the deceased, the probable langavity of the deceased and such other factors as are relevent in determining the maximum amount of compensation payable. In the case of injury factors like disability, loss of earning capacity, medical expenses and expenses incurred on account of the physiotherapy or allied treatment shall also be taken into account when arriving at the final amount of compensation. In any case it shall be incumbent to the Claims Commissioner to ensure that the final compensation is arrived at and paid to the party concerned within one year of the date of accident.

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Railway Bill - proposed amendments - Passenger Amenities.

While the proposed Railway Bill, 1986 is comprehensive in almost every respect relating to the administration of the Railways, it is silent on the obligation of the Railways to provide adequate and reasonable amenities to passengers. These amenities include reasonable facilities at Railway Stations for booking tickets, for rest rooms while awaiting the arrival of trains, restaurant facilities, public telephone booths etc. They should also include adequate and timely service of meals at different hours in long running trains as well as those that start at untimely hours for passengers to take their meals before entraining themselves. The necessary amendments should appropriately form part of Chapter VIII. It may be argued that necessary provisions for passenger amenities can be incorporated in the rules framed by the Central Government. No doubt it can be done, but it is necessary, however, to provide a clause in the Act itself specifying an obligation on the part of the Railway Administration to provide adequate and reasonable amenities for passengers.

Hence the following amendment is proposed: "It shall be incumbent on every railway administration to provide for adequate and reasonable facilities and amenities for passengers for their comfort and convenience both at the Railway Stations as well as during travel. Such facilities and amenities shall include adequate space and provisions in railway stations for the booking of tickets, rest rooms for passengers awaiting the arrival/departure of trains, restaurant facilities and sleeping facilities in Retiring Rooms where passengers usually have to spend more than six hours at a railway station. So also such amenities should include the serving of meals at appropriate hours to the passengers in long distance trains as well as trains commencing at untimely hours preventing the passenger from having his food at his residence in normal hours for such meals".

CONFIDENTIAL

LOK SABHA SECRETARIAT
(Committee Branch-II)

JOINT COMMITTEE ON THE RAILWAYS BILL, 1986.

MEMORANDUM NO. 7

(Comments/suggestions received from
Shri P.S. Subramaniam, President,
Tamilnadu Railway Users' Chamber,
62, Kamaraj Avenue, Adyar, Madras-600020.)

In the Statement of Objects and Reasons appended to the Bill, the Honourable Minister of Railways, Shri Madhavrao Scindia, has stated that the Bill is in response to the public demand for a re-enactment of the Railway Act so as to reflect the large number of changes that have occurred in the Railways since 1890, and particularly after the attainment of our independence. He has also observed that the offences included in the Act have been rationalised and a few new offences have also been included in the Bill. The punishment for the various offences has also been made more stringent, and a minimum punishment has been laid down for each offence.

The Chamber fully appreciates the need for consolidating and amending the law relating to the Railways in the light of the prevailing situation and it hopes that the Bill, as it will finally emerge from the Joint Committee, will constitute a progressive piece of legislation upholding the democratic rights of the rail user, while at the same time ensuring that those who violate the law are dealt with sternly. From the user's point of view, we feel that some of the provisions under Chapter XV for dealing with offences like fraudulently travelling without ticket (Cl.142), travelling beyond the authorised distance without ticket (Cl. 143), transfer of tickets (Cl.147), hawking and begging (Cl.149), tresspass by crossing railway lines (Cl.152), and making false statement for compensation (Cl.153/154) are rather too harsh and some of them even wrong in principle. For example, under the existing law, a passenger travelling beyond his destination due to ignorance can be allowed to return to the destination by paying one single fare, but it is now proposed that such a passenger should suffer a minimum imprisonment of 10 days. Terms like "fraudulently" used in clause 142 and "making a false statement for the sake of claiming compensation" are

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vague, incapable of being proved, and capable of being unfairly used against the passenger, and the Courts are given no discretion to reduce the punishment. The penalty provisions in the entire Chapter XV (Cl.142 to Cl.180) need to be revised and lower punishments provided, and in some petty instances perhaps a mere warning could be deemed adequate. One wonders how a provision like the one in clause 149, for sentencing a beggar to six months' imprisonment and a fine of Rs.500/- can be a feasible proposition.

The proposal to punish the 'offending' railway users should also be balanced by a very strong punishment to the railway employees like TTEs who abet travelling without tickets, take bribes from passengers and resort to other offensive practices. They also should be awarded a compulsory imprisonment and fine, besides dismissal from service following imprisonment. Many offences by rail users are committed in collusion with railway employees.

The punishments proposed for "unbooked luggage" and "luggage beyond the permissible limit" are also excessively harsh and should be scaled down to reasonable figures. The levy of a penalty of 50 percent on cancelled tickets is also unreasonably high.

In the case of pulling of alarm chains for stopping trains, it would be better and fair to passengers if the circumstances under which alarm chain can be pulled without inviting penalty may be spelt out in the law.

Simple technical offences like getting out of the carriage from the off-side, breaking queue for buying tickets, travelling in dining cars for more than the required time, etc. should be dealt with as such, and a very nominal fine only should be levied (say Re.1).

MOVEMENT OF GOODS: This Chamber opposes the proposed alteration to the new provisions for carriage of goods at "Owners' risk". As we understand it, it is proposed that the Railways will only be responsible for the loss of complete consignments provided that the consignee proves "wilful neglect" on the part of the Railway. We feel the "wilful neglect" is a term that cannot be easily proved against the Railway. The provision should be liberalised in favour of the consignor.

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RAILWAY USERS' CONSULTATIVE MACHINERY : This Chamber strongly feels that a provision should be included in the Bill for making it compulsory on the Railway administration to set up Railway Users' Consultative Councils at the Divisional, Zonal and National levels and to reconstitute them promptly once in two years. The users' consultative system was introduced by the British owned Indian railways and worked effectively until 1947. Since then the Indian Railway administration has approached this matter in a luke-warm manner. Committee are not constituted in time, or reconstituted promptly on the expiry of their term. For example, the President of our Chamber had the unfortunate experience of being unanimously elected as the representative of the Zonal Railway Users' Consultative Committee of the Southern Railway to the National Railway Users' Consultative Committee for two consecutive terms, 1972-74 and 1974-76, but the Minister of Railways did not constitute the NRUCC in these four years and therefore not even a single meeting was held. More recently, the Users' Consultative panels were abolished at one stroke by the Railway Minister in 1982 and no committees functioned till early 1986. Even then, the order of the Railway Ministry to reconstitute these Committees with immediate effect from 1986 has been wilfully disregarded by some of the Zonal Railways. Since the railway users have no other forum than those elected Committees to represent their grievances and offer suggestions in the matter of project implementation, passenger amenities, revision of rail timings, catering facilities etc., it is highly important that a specific provision should be made in the new law for constituting these Committees and it should not be left to the discretion of the Railway Board or the Zonal Railway administrations to constitute these bodies or not according to their whims and fancies.

HUMBLE MEMORANDUM SUBMITTED TO THE JOINT SELECT COMMITTEE OF INDIAN PARLIAMENT ON RAILWAYS BILL.

MEMORANDUM NO. 8

SUBMISSION BY BUREAU FOR
PARLIAMENTARY WORK 30 CHITRAKULAM
NORTH STREET, Mylapore,
Madras 600004

REPRESENTED BY ITS CHIEF EXECUTIVE
R.K. BALASUBRAMANIAN, M.A., B.L., Advocate

AND

THE DEPUTY CHIEF EXECUTIVE
J. RUKMANI, B.Sc., B.L., Advocate

Honourable Members,

1. Before undertaking an examination of the new comprehensive Railways Bill of 1984, there is a need to examine three issues.. i.e.,

a) how is the Railways Act of 1890 defective in any or all its aspects,

b) What monetary benefits are likely to accrue to the Indian Railways by the new bill,

c) How far the requirements or demand of passengers are met by the new Railways Act.

2. The Railways were owned by various private sectors till 1947 and a comprehensive taxation policy was adopted to secure to the Government revenue through taxation on various counts of railways and its traffic. But with the advent of freedom in 1947, there was a new thinking that this major transport system should be in the hands of the state and operated as a public utility service - Therefore the various railways were taken over by the Central Government, and the railways were centrally administered through an autonomous Railway Board, and the Board set up various zones with a General Manager to be in charge of these zones. Thus the Government of India, did not have any direct responsibility in the working of the railways.

3. It may be pointed out that railway traffic has enlarged heavily after freedom and there is considerable increase in passenger traffic. Perhaps, during the years 1930-40, the passenger traffic was about 20%.

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during the second world war from 1939-45, the passenger traffic increased much and it rose to about 40%

/very small during

It may be pointed out that the women passenger traffic was/ the Pre-Independence years. Post Freedom years saw an abnormal increase in women passenger traffic. Employment opportunities, industrial development changes in pattern of living, increase in tourist traffic, railway connections with pilgrim centres, holiday wanderers, educational trips etc., have resulted in an vast increase in passenger traffic. Thus the railway passenger traffic in this country today should be about 70%.

4. The present railway bill of 1984 has not taken into consideration this aspect. The basic concept that Railways are a public undertaking for the utility of the common man, has been lost sight of. There are no provisions in the Bill for the creation of a statutory Railway users Committee. These committees are only set up through a Government order. But if there is justification in the labour participantion in the management of industry, if there is justification for the participantion of students on the senate of the unviersities, there is also a justification for the participation of passengers in the management of Railways. Therefore there is a need to provide provision for the participantion of passengers in the management of Railways. Even this provision should include representation to various cross sections of passengers, namely, women, students, labour, handicapped, medical men, lawyers, businessmen, industry etc.

5. The present Bill has not made it clear whether there would be an autonomous Railway Board whether the Railway Board has been abolished and if so, who are the ultimate final authority in the railway administration. If the Air lines has a corporation, if Air India has a corporation, if Shipping has a corporation, if every transport or communication system has a corporation, the Railways also should be made a Corporation. Therefore there is a need to provide for either a Board or a Corporation in the Bill. In such a case, the duties of Board or corporation, the compsoition of these boards the appointments to these board should also be spelt out in the Bill.

6. In a number of Sections the present Railways Bill, the responsibility to prove their claims for losses in transit, demand for compensation etc., have been put on the passengers' users. In a Public utility service just as the Railways, there should be protection to the citizens because the state is always all-powerful. In every other proceedings such as 'prosecution' under the Indian Penal Code, the responsibility to prove the case vests with the Prosecution. Therefore the various sections should be suitably amended to vest the responsibility in the Railway Administration to prove innocence or want of liability and the benefit of doubt shall invariably go in favour of the citizen.

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Limitations have been fixed as 7 days to prefer claims. Now damages are also imposed for over-staying the goods-yard, etc. It is the responsibility of the Railways to protect the life and property of the passenger. The limitation in the Act should not be fixed at all and the citizens or his heirs, inheritors, successors in title, should be enabled to prefer the rights of damages at any time.

7. In the present Bill, the Scheduled prescribes compensations for various types of pets and animals. It is not proper to fix fixed rates for such compensations. For decades Courts have decided on the liabilities of parties, quantum of damages or penalties, the procedure to arrive at this quantum etc., and in a way perfected the system. Therefore, the notes prescribed as compensation for Birds, animals etc., may be taken away from the Statute.

8. The present Railway Bill has not specified 'Insurance' of passenger traffic. Insurance of passenger traffic must be made compulsory in the Statute itself and the premium amount may be collected along with the ticket fare. A provision to this effect is necessary.

9. The Bill has various categories of servants. Public servants coming under the definition of the Indian Penal Code, public servants who are Government servants and public servants who are alone. There is a need to have only one single class of employees. All of them should be made servants of Corporation and public servants coming under the purview of the IPC. Further who is a public servant under the IPC has been defined in the IPC itself. All those who derive monetary benefits from the state are governed by the Indian Penal code. The present arrangement in the Bill is therefore repugnant to the provisions of the Indian Penal Code and thus invalid.

10. Any bill should only speak about the bare set up and administration of a Board, Corporation or body. Other working details are to be left to be governed by administrative orders. There are unnecessary sections like smoking in railways, travelling drunk etc. Even supposing one travels in trains with smokin or drunk, who is to prove it, who should complain, to whom should a complaint be made etc., are difficult. Therefore these sections should be deleted. There is no need to provide statutory regulations for them.

11. Punishments to railway staff are now left in the hands of courts and their apprehension left to the police. There are departmental inquiries. These departmental inquiries are for dereliction of duties. These inquiries are done on the basis of codes prepared for central/railway staff. The new provisions in the Bill, will over ride those provisions in the codes and it will only result in parallel or dual proceedings. This is also a matter for examination whether such proceedings will offend Art. 20(2) of the Constitution of India- providing prosecutions of an individual more than once for an offence.

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12. Therefore the hand of the police and courts should be taken away for these provisions. Courts and Police can always come to prosecute the wrong doer. There is no need for such a provision in the Railway Act.

13. There are labour legislations, like, Factories Act, Workmen's compensation Act Public Health Act etc., which are applicable to Railways. Therefore in all these acts, responsibilities are determined and there is no need for similar provisions in the Act.

14. The present Bill in many of its sections may supersede or run couter to various other State or Central Legislations or Statutes like Factories Act, Labour Legislations, Regulations relating to Transport and Communications, contracts Act, Recruitment to Services, Loss relating to Environmental purity, Regulations regarding Construction of Buildings and Regulations relating to safety. This aspect also should be examined.

15. Most important is the fixation of rates for goods and passenger traffic. There should be a provision for the Constitution of a Passenger Benefit Advisory Board for finalising the passenger and goods traffic rates. This will be a good feature and involve the Public/Passengers in evolving a sound policy of exapansion of the Railways.

16. In the view of the Bureau for Parliamentary work, the Act of 1890 is much better, more elastic and provides scope for expansion of railways. During these many decades, a number of cases have gone to courts and there is a case built on the Railways Act. Thus the Railways administration has been perfected. What we require is a few amendments to the Railway Act of 1890, providing a statutory statutes of the Board, stipulation of their duties and rights, participation of various sectors of passengers etc.

17. We therefore pray that the Bill be dropped in all its sections now, and a committee of men in Public life be constituted providing representation to women, handicapped, students, doctors, lawyers, Representatives of Railway Administration etc. may be set up to suggest any changes in the Act of 1890.

Submitted this the 3rd day of February, 1987.

Sd/-
R.K. BALASUBRAMANIAN
Chief Executive,
Bureau for Parliamentary
Work.

Sd/-
Miss J. RUKMANI
Deputy Chief Executive,
Bureau for Parliamentary
Work, 30 Chitrakulam North,
Mylapore, Madras 600004.

Joint Committee on the
Railways Bill, 1986

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MCC/60/87/

17th January 1987

Maharashtra Chamber of Commerce

((STABLISHED IN 1927))

The Secretary General,
Lok Sabha Secretariat,
Parliament House, Annexe,
NEW DELHI-110 001

MEMORANDUM NO. 9

Re: Railway Bill No. 46 of 1986

Dear Sir,

We refer to our telex and letter of 8th January 1987, requesting you that the Railway Bill be made available to the General public for facilitating it to give its opinion, comments and suggestions on the said bill.

At the outset, we state that ours is a Chamber, a representative body of trade, industry and commerce and its membership is from the whole State of Maharashtra. It has been working for the interest and promotion of trade, industry and commerce for the last 59 years.

We are surprised and shocked to note the secrecy being observed by the Railway Board and the Railway Ministry over such a vital aspect and touching almost every citizen of the country. The copies of this Bill are not freely available to the common user of the railways and moreover, the time limit given for submitting the suggestions and recommendations to the Select Committee is very short. As has been requested to you, vide our telex and letter, we once again request you to please extend the time limit upto the end of April, 1987.

We would also like to suggest that the Select Committee should visit important trade and industrial centres and organise meetings with the Trade Associations and Passenger Associations for knowing their views on the new Railway Bill, as it would not be possible for all the representatives of the Passenger Associations and Chambers of Commerce to meet the Select Committee in New Delhi for oral evidence. In case you feel it proper, our Chamber would certainly like to organise such a meeting in our premises on a day and time convenient to you. This can be finalised after hearing from you in this matter. Our anxiety is that such important amendments should not be carried out in a hasty manner.

We hope and trust that you will accede to the propriety and the necessity of arranging such representative meetings at various centres.

Moreover, we fear that it will not be possible for all the Passenger Associations and Trade Associations to give Hindi version on account of lack of facility of translating and/or preparing memoranda in Hindi. You will, therefore, kindly bear with us for this lapse on our part. However, we are trying to do it.

On important provisions we would like to submit our memorandum for your favourable consideration.

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OWNER'S RISK RATE LAW WILL BE OPPRESSIVE

The Owner's Risk Rate Railway Law was extremely oppressive prior to the year 1907 and was oppressive between the period from 1907 to 1924. It was revised in the year 1924 to make it modera-tely reasonable and is continued to be likewise till this date. The Parliament Bill No. 46 of 1986, which proposes to replace the entire Indian Railways Act (IX of 1890), wants to bring back that law to the level of the one that existed between the period from 1907 to 1924.

In order to explain the above state of affairs, it is necessary to trace briefly the historical events of this law right from 1st May 1890 i.e., the date on which the present Indian Railways Act 1890 came into force.

Speaking generally,'ordinary tariff rate' is called 'railway risk rate' and any 'special reduced rate' which remains lower than the ordinary tariff rate is called 'Owner's risk rate.'

RAILWAY RISK RATE RESPONSIBILITY

In the case of consignments booked at 'railway risk rate', the Railway's responsibility for the loss of or injury to the goods comprised therein has always been heavy. For about 72 years, i.e., from 1st May 1890 to 31st December 1961 that responsibility was that of a 'bailee' under Sections 151, 152 and 161 of the Indian Contract Act. The implication of this responsibility was that any Railway, unless it proved that it had taken the care of a prudent man, was to be responsible for the loss of or injury to the goods. As from 1st January 1962 to this date, the Indian Railways have been put on the level of "common carriers" under English Law. Its implication is that the Railway has to accept a responsibility for the loss of or injury to goods, no matter if it had taken or not taken any amount of care.

OWNER'S RISK RATE

In the case of consignments booked at "owner's risk rate", the Railway's responsibility was being measured in terms of, what was then called in railway parlance as, Risk Note-B.

The initial Risk Note B, which came into being as from 1st May 1890 was in force upto the year 1907. It was revised in the year 1907 and remained in force upto 1924. It was further revised in 1924 and continued upto 31st July 1950. As from 1st August 1950, all risk notes were abolished but the provisions thereof were incorporated in the Indian Railways Act itself. Section 74C and Section 74D, which were added in the Act, contained ad verbum the provisions of the Risk-Note B referred to above. Sections 74C and 74D existed in the Act as from 1st August 1950 to 31st December 1961. Drastic amendments were made in the Indian Railways Act in the year 1962 but these two Sections were kept in tact and renumbered as Section 74(3) and Section 76F.

OWNER'S RISK RATE RESPONSIBILITY

The Risk Note B which existed between the yeare 1890 and 1907 bestowed on Railways a complete exoneration from all responsibility for the loss of or injury to goods booked thereunder. This law was extremely oppressive.

The Risk Note B which existed between the year 1907 and 1924, called upon the Railways to remain responsible only for the loss of complete consignment provided the consignment proved "wilful neglect" on the part of the Railway. It is a matter of

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common knowledge that it is well nigh impossible for the claimant to prove wilful neglect on the part of the Railway because the facts of the dealings of the consignment remain exclusively in the knowledge of the Railway. In effect, this law was oppressive, not extremely oppressive as was between the period from 1890 and 1907.

The Risk Note B which existed between the period from 1924 to 1950, called upon the Railways to accept responsibility for the 'non-delivery' or 'pilferages' provided the claimant proved 'misconduct' on the part of the Railway or its servants. As stated above, to prove 'misconduct' on the part of the Railway was also next to impossible. A statutory provision, however, was made in this Risk Note B imposing a duty on the Railway 'to disclose to the consignor how the consignment was dealt with throughout the time it was in Railway's possession or control'. This was considered to be a justifiable provision and was, therefore, peacefully acted upon for the last 62 years. The provisions of the 'disclosure' which were incorporated in the Risk Note B was adopted ad verbum in Sections 74D of the Act, (in force from 1-8-1950 to 31-12-1961) and also in Section 76F (in force from 1-1-62 to this date) of the Act. The present 'Owner's risk rate' law is thus justifiable, but the unfortunate phenomenon is that this very provision is omitted in the Bill. In the result, the oppressive law of 1907-1924 is meant to be revived. This is a shocking atrocity.

BILL WILL MAKE R/R A DREADFUL DOCUMENT

It is needless to mention that, so far as the commercial dealings with the Railways are concerned, there is no other important document as the Railway Receipt is. During the course of more than a century long career of the Railways in India, no statutory provision ever existed touching the subject of Railway Receipt as regards:-

a) the form in which the railway receipts should be issued;

b) the correctness or otherwise of the 'weight' and 'number of packages' mentioned in the railway receipt; and

c) the passing of 'property' in the consignment covered by a railway receipt.

As regards item (a) above, clause 63(1) of the Bill indirectly suggests that the Central Government will prescribe a R/R form in which thereafter all 'R/R Form' which is still in use, is out-dated. There is, therefore, certainly a necessity to introduce a new R/R Form which should be well designed and contain information which is essentially needed. No scope should be given to the booking staff to pass any remarks on R/Rs as they do at present.

As regards item (b) above, Clause 63(2) and 77(1) are relevant. Necessary extract from these clauses are reproduced below:

"Clause 63(2) - A Railway administration shall not be responsible for the correct of the weight, description, or classification of goods or the number of packages mentioned in the railway receipt unless a certificate to that effect is recorded in the railway receipt by a railway servant authorised in this behalf".

Relevant extract from Clause 77(1) is reproduced below:

"no(re) weighment shall be allowed in cases of goods which are perishable and likely to lose weight in transit; also

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no (re) weighment shall be allowed if there is congestion in the railway yard, or if, in the opinion of a railway servant authorised in this behalf there exists no circumstances which can warrant (re)weighment".

The combined effect of these two clauses will essentially be quite disastrous.

Armed with the provisions in these two clauses, if turned into law, the RAILWAYS, which are traditionally interested in preventing the truth or fact of 'shortages' from coming to the light under one pretext or the other and necessarily almost without exception.

i) (Railway) will avoid to record weighments of all wagon-load consignments offered for carriage by railway by the consignors for any lame excuse; that being the case, forwarding station staff will not record a certificate as regards the weight which is contemplated in the latter part of Clause 63(2).

ii) (Railway) will also turn down the consignees/endorsees' requests for (re)weighments of the wagon-load consignments suspected to contain less contents at the destination stations, firstly on the ground that no certificate had been issued by the forwarding station regarding the weight and secondly for the reasons as "no circumstances exist to warrant a reweighment" or that the "railway yard is congested" or that "there are operational difficulties" and so on.

It may be pointed out here that, even though at present there are no statutory provisions as those that are contemplated by Clauses 63(2) and 77(1) referred to above, the Railways, monopolistic as they are in the Railway transport business, do follow a policy of denying the correctness of the weights shown in the R/Rs under Rule 115 of the Goods Tariff the provisions of which are quite irrelevant for the purpose. In short, that Rule is daily misused by the Railways. Further the Railways' concerned officers invarably refuse to grant consignees endorsees' requests for reweighment under Rule 118 which contains provisions as the one in Clause 77(1). These Goods Tariff Rules, it may further be noted, are not framed under any of the provisions of the Indian Railways Act. The same policy is followed by the Railways in respect of the 'counting of number of packages'. The forwarding station staff do not count packages offered for carriage for any lame excuse; and in order to get rid of his failure of duty to count, they issue R/Rs which they describe as "said to contain" R/Rs.

The sum total of the provisions contained in the said two Clauses is that no 'shortages', if any occured during transit, will be allowed by the Railways to be jointly ascertained as between the Railways and the Consignees/Endorsees. Consequently, the consignees/endorsees will not be in a position to prefer their claims, the Railways will necessarily turn down those claims on the ground that no shortages were ascertained, or 'shortage certificates' were granted.

As regards item (c) above, Clause 72 of the Bill is relevant which is reproduced below:

"Clause 72 - The property in the consignment covered by a railway receipt shall pass to the consignee or endorsee, as the case may be, on delivery of such railway to him and he shall have all the rights and liabilities of the consignor".

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In support of the provisions contained in Clause 72, the following observations are made in the STATEMENT OF OBJECTS AND REASONS appended to the Bill:-

> "In accordance with certain judicial pronouncements, the Bill provides for a statutory recognition of the railway receipt as a negotiable instrument".

When in a "Statement of objects and Reasons" appended to a Bill, a reference to any judicial pronouncement is made, it is customary to quote the 'citations' thereof as published in the Law Reports. This has not been done in the present case. It is, therefore, difficult to appreciate the purpose for which the Clause 72 has been brought into being in the Bill. However, it is proposed hereinder to make certain observations as regards the possible ill consequences of Clause 72 and also to describe the legal status of present railway receipt.

Clause 72 speaks of "property" in the consignment and further lays down that the 'property' would pass to the consignee/ endorsee on delivery of the R/R to him. It appears that Clause 72 pre-supposes that it is only the person who has property in the goods to be consigned offers them for carriage by railway. This is not correct. Any person who is not the owner of the goods, in many a case, does offer goods for carriage by railway. In such case, the provisions of Clause 72 will necessarily remain ineffective.

Factually, in the case of goods despatched by railway, the only important aspect thereof is to whom the goods should be delivered at the destination station. It is a matter of common knowledge that R/Rs are handed over to the Hundekaris duly endorsed in their favour. Is it that in the strict sense of Clause 72, the property in the goods would pass to the Hundekari? Certainly not. Clause72 would therefore prove to be absurd.

The present status of a railway receipt is that of a "document of title to goods" as defined in Section 2(4) of the Sale of Goods Act, 1930 which is workable in a quite satisfactory manner. There is, therefore, no need to disturb this position.

It appears that for a very negligible convenience of the Ra-ilways' Claims Sections, Clause 72 is coined. While paying claims, the Claims Section does not care to ascertain the real owner of the consignment but goes on paying claims to the invoiced consignees. If a claim is not received by the proper owner of the consignment, some times litigations do arise against the Railways. In order to avoid such litigations, Clause 72 appears to have found place in the Bill. This Clause must, therefore, be nipped in the bud as it will do more harm to the commercial railway users than any good to the Railways' Claims Section.

BILL KEEPS 'DEMURRAGE' ATROCITY IN TACT

Railway "Demurrage" charge has a lways been a serious headache for consignors/consignees/endorsees, particularly for the latter two. It is one of the biggest drains of money that flows from the pockets of the commercial railway users into the Railway treasury mostly for no faults or defaults on the part of the former.

It is a well-recognised and ardent necessity in the field of railway transport based on justice as well as in the national interest that there should be caused no unnecessary detention to wagons, either -

1) by the consignors who are required to load their goods into wagons; or

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ii) by the consignees/endorsees who are required to unload goods from wagons; or

iii) by the Railways themselves who are required to operate wagon-movements with good plannings and effective action thereon.

With a view to persuade one and all (including the railway servants) to avoid detention to wagons, the Railways have coined an attractive saying which they promulgate time and again as: "KEEP WAGONS MOVING".

It generally happens or is likely to happen that because of their own difficulties - genuine or lame - the consignors fail to load their goods into wagons offered for them for loading at the forwarding stations and the consignees/endorsees fail to unload goods from loaded wagons on their arrivals at the destination stations. The detention thus caused to wagons, it is due to any real faults or defaults or blamish on the part of the consignors/consignees/endorsees, it is but reasonable and is in the interest of justice that the loss caused by such detention to wagons must be compensated by the party concerned to the Railways.

There is one more and a very important consideration touching the subject of detention to wagons. It is evident that a detention to wagons caused by one person re-acts as a detention to the movement of goods of other persons. Unnecessary detention, therefore, is adverse to the interest of the Nation as a whole. Having regard to this aspect of the subject, it becomes expedient to discourage detentions to wagons. If not anything else such a detention can well be considered to be a social sin or offence. And for a matter of that, the sinner or the offender deserves to be penalised. Under the circumstances and in order to deter the persons who are prone to detain or actually detain wagons wantonly or with ulterior motive of his own unde advantage, the Railway are allowed to levy and recover "demurrage" charges at deterent rates so much so that, in the result, the amount charged takes the shape of a penalty.

In actual practice, however, the Railways do not wield this important weapon possessed by them for the purpose for which it is meant but use it bluntly thinking it to one of the sources of railway revenue. For a matter of that, the Railway authorities mostly do corner particularly the consignees/endorsees into purposefully created difficulties and mercilessly squeeze out from them money in the form of huge demurrage charges. Some improvement was expected in the present Bill but in vain.

Whenever any loaded wagon arrives at the destination station with seale intact, and is placed in position for unloading at the proper unloading place, and when on opening the wagon, the contents thereof do not appear to have been tampered with or are perceptibly short, no consignee/endorsee generally causes detention to the wagon but invariably unload the contents thereof within 'free' time. But ....

i) if any wagon is not given in position at its proper unloading place but at some distant spot in the railway yard, or

ii) if any consignee/endorsee, for any justifiable reason, claims re-weighment of the contents in the wagon, and decision, affirmative or negative, is delayed by the railway authorities, or

iii) if on account of labour strike or general 'bandh' labour is not available to unload or

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iv) if there is any such cause which is not beyond the control of the consignee/endorsee and he fails to unload,

detention is necessarily caused to the wagon.

In respect of cases in items (i) and (ii) above, the railway authorities are primarily the cause for the detention to the wagon and in respect of case in item (iii), neither the Railway nor the consignee/endorsee can be said to be the cause for detention. And in respect of case in item (iv), the consignee/ endorsee is entirely at fault and the cause for detention.

Without giving any consideration to the fact as to who is the root cause for the detention to a wagon, it is customary on the part of the Railways to calculate demurrage charge for the entire period less the 'free' demurrage time, to debit it to the consignee/endorsee's account. This custom is unreasonable and unjustifiable.

It always keeps the Railway in a dominating position, no matter the Railway is the root cause for the detention to the wagon. This custom enables the Railway to levy demurrage charges even though the consignees/endorsee is not at fault but the Railway is. This custom compels the consignee/endorsee to be at the mercy of the Railway and to pray for the waiver of the demurrage charge which fundamentally is not due and recoverable. This enables the Railway to keep the consignee/endorsee under an undue obligation. This enables the Railway to compel the consignee/endorsee to accept delivery of the damaged or short - delivered goods under clear signature.

The enitre unfortunate state of affairs is due to the fact that there is no statutory provision as regards the exact circumstances under which the Railway should be entitled to levy and recover demurrage charges from the consignee/endorsee. It is, therefore, suggested that the following Clause should be inserted in the present Bill:-

> "A railway administration shall be entitled to recover demurrage provided it proves that the detention to the rolling stock was due any fault or default on the part of the consignee or the endorsee or the consignor".

In addition to the above submissions which are pertaining to the goods transporting is concerned, we give below our comments on the other aspects of the Bill.

Section 2

1) Eventhough the words "Central Government" are used in the Act, there is no any definition or Explanation as to the words.

The definition of Central Government should be incorporated.

2) The description of "rate" is not correct. It does not include fare freight & any other charges, but fare, freight and any other charges are arrived at. This needs change: Definition of words: Railway administration" does not give proper description and it does not reflect the formation of Railway Board with its duties.

3) The definition indicates General Manager as the only head of Govt. Railway or zones. The authority of the railway board or the secretaries to the Ministry of Railways is undermined.

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Hence this definition is to be widened.

The scope of Railway Board, Secretaries and General Manager should be distinctly specified in the Act.

4) The word "Passenger" is not properly defined. The passenger is a common noun and in the proposed act it is made as " particular noun". This is not correct. In fact, the person travelling without any valid person travelling without any valid ticket or pass cannot be a passenger and hence he shall be not answerable to the provisions of this act. In order to include such persons, definition of passenger needs revision.

5) Definition of "person" needs to be incorporated.

Section 14: deprives a citizen from filing a suit against Railway-administration. This is a blanket power to railway administration. Hence some qualifications should be laid down to protect the fundamental rights of a citizen.

FIXATION OF RATES (SECTION 28):- The decision of fixing the rates should not left to the sweet will of the Govt. there should be some definite norms laid down for fixing the rates. Slab-system should not in anycase be adopted. There should be definiteness as to the rates to arrive at proper budgeting either of an individual or consumer of railways. The sanction of the Loksabha must be the precondition for fixing rates.

SECTION 48(1) Sr.No. on the ticket is a must which is not included in particulars detailed in section 48.

SECTION 51: This section provides for the name of the person travelling but as there is no provision to denote the name on the ticket and it is not desired also by the railway administration, the section 51 becomes either redundant or impracticable.

Further the provision allows railway servants to change the name which means administration desires to promote mal-practices, corruption and unnecessary Strifes.

Transfer of ticket should be in smooth & easy manner. Ultimately Railway is a consumers service organisation which should not treat all the passengers as dishonest.

SECTION 50- Cancellation of Tickets:- At present, railways are unable to provide reserved accomodation practically to all persons who approach for the same. Thereby there is always a heavy que on waiting list. No seat goes vacant. Under the circumstances, the refund of the ticket fares should be given without cutting any amount as clerical charges. Railway does not in any case loose the revenue since tickets can be issued to persons on waiting list out of cancelled tickets.

If the cancellation charges are recovered at higher-rate, the tendency of the passengers provokes corruption in both the quarters.

The railway undertakes to carry a passenger from one place to another and for which the ticket is issued on taking the value of the journey. One does not understand why there should be any cut as cancellation charges while refunding the amount of ticket.

Section 58 :- Rules framed under this section should be published in official gazzatte & as well as made known to public. These rules should have some sanction of LOKSABHA. So there would not unilateral action to change the rates at the sweetwill of the railway administration.

SECTION 77- This section provides for not allowing by railway servant the request for wrighment of consignment made by consigner.

This is not befitting to the cannons of not only the natural justice but healthy judicial preceedents. This is an encroachment upon the fundamental right of a citizen. Hence this provision needs be deleted or atleast redrafted to permit the weighment on

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request under any circumstances.

The powers to reject the weighment given to railway servant are excessive and tyrannical to consumer of corruption and mal-practices.

Section 78 - The railway delivery if given by railway servant, the responsibility must be attributed to the erring railway servant instead, the Section 78 provides for immunity. Thereby there needs a revision in this section by fixing definite responsibility on railway-servant in case of wrong delivery. Railway administration giving service must shoulder the responsibility to carry the goods and deliver the same to the proper person in safe, sound condition. This should be incorporated while in this section. The sections as to demurrage etc. should be so drafted to fix responsibility on railway servant, to extend efficient service and to attract more customers to avail the carriage facility of railway and to increase the revenue of the railway.

The provisions regarding the carriage of goods incdrporated in the Act in Chapter II are basically one sided. No responsibility is cast upon either on railway servant or on the administration as a whole. The customers are held responsible for all the acts and commissions and omissions. The responsibility to carry goods should be shared first by the railways as carrier and negligence and lapse should be properly fixed according to the principles of law and natural justice. The railway servant should always feel a pinch and should act as a prudent person with proper responsibility as if his own goods are being carried. The excessive rates, penalties levied would not increase the revenue but lead to malpractices, corruption with total rise in price index.

The defective wagons or vehicles, should not be given and if given responsibility must be on railway.

The timing of the arrival of railway wagons or parcel trains should be meticulously followed so as to attract more customers for carriage by railways. The carriages activity should be carried in such a manner that customers would feel as if their own machinery is being adopted to carriage of goods. The railway should not always take a view that they are not at all concerned with the security of goods being carried.

PENAL PROVISION

All the passengers are not dishonest, but it is seen that railway thinks all passengers are dishonest, &cocits. The penal provisions are drafted with this idea in mind which is proved detrimental to the provisions to all sections from 142 to 192. These provision to every section provides for minimum punishment and fine and it has been made compulsory on judiciary to declare minimum punishment & levy fine. This is not correct, as this shows that Indians do not have any morals. The immage of Indian who travel by railways is lowered. The powers of judiciary are encircled by limitation. Freedom & superierity of judiciary is curbed. In fact, in free & democratic country like India the values of humanity need be honoured, good in man must be highlighted. Hence all such provision fixing minimum punishments/ fines should be dropped. is

The Indian penal code/sufficient enough to cover all the acts-and emmissions which are narrated in the railway act. There is no need to make railway act, a law of crimes & code of criminals & penal actions.

There is a distinction made in between man and man.

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The railway servant & passenger are both human-beings. They should be dealt with on equal footings for judiciary but the railway act makes distinction by letting the railway servant free upon his breach of conduct or allowing him to go with a paltry fine(Section 188).

There should not be such distinction which is beyond the principles of law natural justice and human-relations.

RAILWAY CONSULTATIVE COMMITTEE:

There is no mention or provision for such committees in the act. There must be such consultative committees established by statue and the provisions must be incorporated in the act.

The Statutory committees shall work more effectively for the better administration, redressal of grievances of passengers, removals of illfeelings, misgivings prevailing in public.

At present, the status of these Committees is of advisory nature which does not bestow any authority upon the members of these committees and are only of decorative nature.

This status of these Committees should be enhanced.

SECTION 196:- This section violates the principles of fundamental rights to approach the judiciary. Hence this should be deleted.

The railway must shoulder the responsibility of

1) Running the trains in time.
2) Carrying the goods in proper order safely in time.
3) The responsibility of delays must be properly fixed on servant and necessary check must be excercised with some deterrant minimum punishments incorporated on Railway Act so as to ensure the prestigious & monopoly position of railway in the country.

Further more, we observe that a special treatment is given to the railway employees as regards punitive provisions in the Bill are concerned. This sort of discrimination between the railway employees and the citizens of the country should not have been created.

We do hope the above memorandum receives due consideration by the Joint Select Committee.

Thanking you,

Yours faithfully,

(S.S.PINGLE)
SECRETARY GENERAL

RLH.

Joint Committee on the
Railways Bill, 1986

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MEMORANDUM NO. 10 KD/ January 22, 1987

Shri R.S. Mani
Senior Legislative Committee Officer
Lok Sabha Secretariat (Committee Branch-II)
Parliament House Annexe
New Delhi - 110 001

Sub: Railways Bill 1986

Dear Sir,

We are grateful to you for your letter dated 9th January, 1987 sending a copy of the proposed Railways Bill 1986 introduced by the Parliament to replace the existing Railways Act, 1890, for our views.

Although some improvements seem to have been carried out in the proposed bill over the provisions in the old Act, a number of proposed provisions give an impression that they are intended to exploit the Railway's monopolistic strangle hold of the transport sector to the detriment of the interests of the consumers thereby destroying the traditional commercial orientation of this vital undertaking. We feel that the opportunity to amend the original Act after a lapse of nearly a century should have been utilised to introduce a greater degree of responsiveness to the needs and requirements of the consumers. As against this reasonable expectation, a number of clauses proposed in the new bill seem to be arbitrary and unilateral in favour of the railways which will make it more difficult for the users to obtain a fair deal and justice under the new dispensation.

Whereas, earlier, the provisions of the existing Act brought out very clearly the concern of the Central Government to ensure that the erstwhile private railway companies did not exploit the users, the new bill does not seem to show the same concern for safeguarding the interests of the users. The sole objective of the proposed Bill appears to be to legitimatise various unilateral and arbitrary actions of the Railways witnessed during the last few years, without any danger of the same being challenged in any forum under the law for redressal of the grievances of the consumers which is the normal style of Government Undertakings now.

In respect of Railways, the Central Government is synonymous with the Railway Board, which is the apex executive body and hence Railways would be judges in their own cause. Railways would have no obligation even to

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place such matters before the Parliament. There is therefore, a strong case for widening the scope and jurisdiction of the Railway Rates Tribunal to cover such aspects like classification/reclassification of commodities, fixation of rates and rates of wharfage/demurrage etc. In fact, if necessary, the Tribunal may be strengthened on the lines of Administrative Tribunal, by even opening benches at important commercial locations to ensure speedy redressal.

We, therefore, welcome the constitution of the Select Committee and its initiative in eliciting the views of various Users Associations/Chambers of Commerce. A note on some of the specific points is enclosed. We have tried to give our view points on various sections within the time frame available to us. However, given an opportunity, we would like to present our case as "oral evidence" if required as in the meantime we will also be able to collect the views of our Members on other items. As for Hindi version, we donot have facilities for translation but we are trying to get it done. 15 copies would follow in due course. In the meantime, to avoid delay, we are sending 75 copies of this letter and enclosed note as desired.

Thanking you,

Yours faithfully
for the Fertiliser Association of India

Pratap Narayan
Executive Director

NOTE ON PROPOSED RAILWAY BILL 1986

The Railway Bill was introduced in the Parliament in April 1986 to replace the existing Indian Railway Act, 1890. Some of the proposed sections/ clauses in the Bill are arbitrary and unilateral and adversely affect the rail users' interest like that of Fertiliser Industry. The Bill, if passed as it is, will absolve the railways of certain responsibilities which hitherto were being performed by them.

It may be recalled that after independence, the Ramaswamy Mudaliar Freight Structure Committee had recommended that the Indian Railways should assume the common carriers' responsibility which was accepted and as a result most of the goods are carried under carrier's responsibility at Railway's risk (with certain exception as in the case of goods to be carried under owner's risk) but in the new bill the responsibility of the Railways is being sought to be diluted with a result that ultimately the users may be deprived to get a fair deal from the Railways. Already users of Railways are being subjected to higher freight levies and ever increasing demurrage charges. We find that during the last 5-6 years, the freight rates have been increased three times despite various technological improvements carried out by the Railways in the intervening period including electrification and dieselisation, induction of high powered locomotives, larger capacity wagons, higher pay loads of trains like jumbo rakes, which should have actually led to lower costs and lower rates but in reality the rates were increased during this period; moreover, they continue to be revised upwards and it appears that the Railways have become much less responsive and sensitive to the genuine consumers' needs and requirements.

This Bill thus is aimed at giving powers and authority to Railways to function ignoring the interest and the problems of the users. At the same time they are not providing any avenue to the users to redress their grievances in the court of law.

With this background we offer our comments on some of the section/clauses of the New Bill in the following paragraphs:-

Section 2(20):

This Section defines 'intransit' in relation to the carriage of goods by Railways. It has been stated that transit commences as soon as the railway receipt is issued or consignment is loaded, whichever is earlier and

terminates on the expiry of free time allowed for unloading of consignment or within such free time allowed for the removal of the goods from the railway premises.

If the purport of this clause is to absolve the railway of any damage/loss/deterioration to the goods suffered outside these periods, even though the consignment would continue to be under the custody and the control of the Railways, this is grossly unfair. It is well known that not in frequently there is a delay in issue of railway receipt and/or loading after the consignment is surrendered to the Railways for carriage. Similarly, for various reasons, there is time lag between unloading and the delivery of the consignment. During such periods the consignment continues to be under the control of the Railways in their premises/rolling stock and the consignor/consignee have no control and consequently, denial of compensation for any damage or loss during such period is not justified. It may also be mentioned that in the event of delay in any loading or removal of consignment, the Railways charge penalty in the shape of demurrage/wharfage. In another words, Railways do not hold the consignment graties.

In view of this, it is suggested that this clause should be revised to ensure that the transit commences as soon as the consignment is surrendered for carriage and should terminate only after the delivery is effected.

Section 28 & 29 :

Under these clauses, the powers to fix the rates for carriage of passengers and goods and other incidental charges besides classification/reclassification of commodities been vested in the Central Government. As is well known, in the context of the Railways, the Central Government means the Railway Board which also acts as the Ministry of Railways and which is the apex executive body of the Railways. There is no provision for approval of such rates or other charges and classification/reclassification by the Parliament.

In view of the fact that a separate railway budget is presented to the Parliament, it was a tradition for a decade after separation of railway finance from the general budget that any changes in the rates or other charges or classification of commodities used to form a part of the budget proposal requiring parliamentary scrutiny and approval. However, for the last few

years it has been seen that such revision of the rates, other charges and classification/reclassification has been done by the executive orders barring parliamentary scrutiny before enforcement. This has rendered the railway budget exercise totally meaningless. The purpose is only to inform the Parliament about the revenue and expenditure details. The same can be served by the presentation of demands for grants as in case of other government ministries/departments to form a part of the central budget, thereby dispensing with a need for a seperate railway budget.

Railway transport being a basic infrastructure for the community, any changes in feres/freight rates affects the common man directly - much more than government's taxation proposal. Consequently, it is not only fair that changes in rates, other charges and classification should be subjected to prior scrutiny and approval by the Parliament thereby restoring the sanctity of the railway budget.

Section 35:

This clause bars the jurisdiction of the Railway Rates Tribunal in respect of

(a) Classification or reclassification of any commodity;

(b) Fixation of wharfages and demurrage charges (including conditions attached to such charges);

(c) Fares levied for the carriage of passengers and freight levied for the carriage of luggage, parcels, railway material and military traffic and

(d) Lump sum rates.

The reasonableness of classification or reclassification of any commodity fixation of wharfage, demurrage charges and lumpsum rates where it has been noticed of late, that considerable arbitrariness has been subjected to should be under the jurisdiction of the Railway Rates Tribunal so that the aggrieved users can seek the redressal.

Section 63(2) :

This Section absolves the Railway administration of responsibility for the correctness of weight, description of classification of goods or the number of packages mentioned in the RR unless a certificate to that effect is recorded in the RR by an authorised railway servant. As is well known the Railways have been issuing "said-to-contain" RRs even in those cases where clear RR should have been issued as Railway staff has been posted specifically for doing the job at the cost of the sender in the sidings. The new provision will make the situation worse as it would legalise the present position. This will ultimately result in outright rejection of claims for compensation to the users whereas the need was to provide for a clause which should have facilitated the issue of clear RRs.

One should ask the Railways as to why should then the siding owners bear the extra cost of the Railways, if they are not to perform their legitimate duty. "Said-to-contain" RRs can be issued even at the serving station, where actually the cost of the staff would have to be borne by the Railways. The objective of encouraging sidings for major industries was to avoid congestion at normal goods terminals and towards this end provision for railway sidings or assisted sidings also existed (besides private sidings) to take the service to the major consumers doors. Over time, provision of Railway/Assisted siding has become almost non-existent and the entire burden of the capital and recovering costs has now been passed on to the consumers by way of private sidings as fantastic costs like housing,train examination staff etc. On top of it, issue of said-to-contain RRs is taking their monopolistic character to the ridiculous limit.

Section 64(6) :

This sub-section provides that the Railway administration shall not be liable for any damage/loss/deterioration which may be caused by detention of goods or examination in respect of differences in regard to description of the goods.

This is grossly unfair because during such period the consignment was under the control of the Railways in their premises. Similarly, the delay that may take place for completing the process would also be beyond the control of the consignee or the endorsee. Consequently, it is only fair that the Railways

should accept the responsibility for damage/loss/deterioration of the consignment during such period of detention.

Section 67:

This section provides that in case of carriage of goods over a route other than the route by which the same were booked due to any cause beyond the control of Railway administration or due to congestion in yards or any other part or reasons, Railway administration shall not be deemed to have committed a breach of the contract of carriage by reason only of the deviation of the route.

While it is appreciated that such diversions beyond the control of the Railways should not constitute a breach of contract, if the implication thereof is that the Railways would have no liability for damage/loss/deterioration (due to such diversions including consequent delay in transit). This aspect may be considered for clarification since it would not be fair for the users.

Section 69 (1c)

This sub section authorise the Central Government to restrict or refuse acceptance of such goods or clause of goods at or to certain station for carriage as may be specified in the order.

Lately, it has been observed that such restrictions were continued for unduly prolonged period although the basic intention of the provision should be to overcome the problems caused by such congestion only for a short period. What is worse is that earlier, such restrictions used to be for broad type of traffic like mineral traffic, grain consignment, general goods traffic etc. Lately, the Railways have started putting such restrictions for a specific commodity. A typical example of this is restriction of fertilisers traffic to Faizabad whereas other similar traffic like cement is being allowed. Such restrictions clearly go beyond the purview of the intention of this provision and tantamount to giving undue preference for a particular type of traffic and should not be permitted.

Section 74:

This section authorises the Railway administration to deliver a consignment when the railway receipt is not forthcoming to a person entitled in the opinion of the Railway administration to receive the goods, in such manner as may be prescribed.

While we can appreciate delivery of consignment in such cases, by implication, it should not absolve the Railways of their responsibility for damage/loss/deterioration suffered by the rightful owner in the event of such delivery having been given to a wrong person. This aspect must be clearly spelt out. If this is not clarified it may lead to malpractices with the connivance of the Railway staff.

Section 77:

This section gives sweeping powers to the Railways to deny the feasibility of reweighment besides levying demurrage/wharfage charges.

It would mean denial of even open and weighment delivery of goods reaching destination in damaged condition. If, however, reweighment is granted at the sweetwill of the Railway servant, the party is liable for demurrage/wharfage charges. This would mean taking the delivery of material in damaged condition at the destination station and at the same time, charging demurrage and wharfage at the time of delivering the same. This means, the party at the destination station is doubly penalised both by damage to the material and paying weighment charges if weighment is granted by the Railways.

Section 78:

This Section absolves the Railways of the responsibility of delivery to the wrong person even when it is on a forged or otherwise defective RR.

It is really amazing as to how can the Railways claim immunity for delivery on 'forged' or 'defective' RR. It is the responsibility of the Railways to ensure that the document presented for taking delivery are genuine and not defective. If they fail in discharging the basic duty, they cannot be absolved of the consequent liability as it may encourage increasing fraudulent practices in connivance with the Railway staff.

Section 92:

This section absolves the Railways of liability for any damage/loss/deterioration when the wagons are handed over at the interchange point in case of inward traffic.

Normally the concept of providing a separate siding with even commercial staff at the cost of user is that the normal function of discharge at Railway station are shifted to the siding. The extent of damage/loss/deterioration would be known only when the goods are unloaded at the siding after placement of wagons under the supervision of the commercial staff. Consequently, Railways cannot be absolved of the responsibility for damage/loss/deterioration to consignment in such cases. This section could consequently to be amended.

Section 93:

No consignee will choose to send his goods in open wagons exposing them to the risk of loss, damage, deterioration etc., until he is forced by Railways due to their own failure for not providing proper stock. The consignor, therefore, has no choice for bulk movement except to use open/defective wagons. There is no freight rebate and no responsibility by Railways. While giving the projections by the Railways for the movement of the traffic in a year due weightage is given to the availability of good/covered wagons for a specific type of traffic. However, if proper type of stock is not provided to rail users, there seems to be no logic to deny the claims for damage/loss/deterioration in such cases, having charged the normal freights.

Section 94:

This section shifts the burden of proof from Railways to the user to prove that the damage is caused due to delay in transit and the detention in transit was due to negligence or misconduct on the part of the Railways.

It will be appreciated that the user is in no position to find out where and why delay in transit took place on the Railway system and it is unfair to accept him to suffer a loss due to his inability to prove misconduct on the part of the Railways. As long as the Railways have accepted the consignment for carriage and it is delayed in transit and for whatever reasons, they should accept the liability thereof and the burden of proof that there was no misconduct on their part should be on the Railways and not the other way around.

For example, frequently, wagons are marked sick en route and they remain lying in the yards for unduly long periods and consequently Railways must accept the responsibility in such cases.

Section 196:

This section bars the jurisdiction of civil courts to entertain proceedings of any action or omission of the Railway Administration except as provided in the new Act. This fringes on the legal rights of the users. It will not be only an act of injustice but would also tantamount to denial of his legal fundamental rights under the proposed bill. This aspect needs revision.

A Bill on Railway Act.... Points for consideration..

Object :- The Statement of object and Reasons clearly points out vesting of absolute powers to fix rates for the carriage of passengers and goods so also limiting the monetary liability of railway administration in respect of payment of compensation for loss, damages of goods.

One really wonders, how these can be prime object of this publicly importnat Bill. The prime object must be to give more efficient and speedy services, facilities to the citizens using railway as a transport mode.

If absolute powers of fixing rates are vested with the Govt.and also liability to pay the reasonable compensation is made limited, naturally citizens will be only on the mercy of rail administration. To avoid it, at least, Statement of objects should be reframed where in main emphasis should be on effective speedy services and also protecting rights of the commuters.

In light of above let us consider following main sections of the Bill which either requires total delection or few : amendments :

1. **Chapter VI :-** Fixation of Rates : Section 28, 29 and 30 are three sections providing for fixation of rates, classification of commodities as well as fixation of Station - to - Station rates. The wording of all these sections clearly indicates that absolute powers will be with the Govt. and Rail Administration. Experience of last two decades speaks of steep revision of rates without any extra services and needed facilities. All the commuters are suffering badly as they do not have their say in this procedure. It is high time that such a policy should be scraped for ever. To achive this, clear provision be inserted that "before finalising the rates so also classification, objections and suggestions will be invited from public within a period of 30 days and thereafter giving proper hearing to concerned parties decision will be taken". This is mostly done by a road transport authorities by their law. Similarly railway should follow the procedure.

   There is another solid reason why objections must be called for. Chapter VII deals with Railway Rates Tribunal. Any aggrieved party is supposed to approach Tribunal if he feels injustice in levying rates by the rail administration. But the Tribunal is absolutely barred from jurisidiction in respect of classification by section 35. Thus, a natural right to go to the tribunal is done away with.

   The Situation, therefore, is, you have no legal say in rates fixation and classification, nor you can go to the tribunal. In a democratic country such a situation is always dangerous. Therefore, 'Provision to invite objections' must be inserted in chapter VI.

(CONTD..2/-..)

2. Chapter VII :- Railway Rates Tribunal :- As already pointed out, section 35, bars tribunal to consider any cases of :

I. Classification or reclassification of any commodity.

II. Fixation of demurrage and wharfage charges.

III. Fares levied for carriage of passengers and freight levied for the carriage of luggage, parcels.

IV. Lump-sum rates.

Before 1985, one must know, it is the tribunal alone had power to reclassify commodity in a higher class ensuring fair deal to all. In fact restoration of these powers is essential. There seems no justification why only Rail Administration should have final say who themselves are fixing classes. An independent body to examine such actions must exist.

Therefore section 35 be merged with previous section 34 which specifys cases that will be heard by the tribunal.

3. Chapter VIII :- Carriage of Passengers :- Section 47 provides for timetable of Indian Railways. We all know that time-tables are printed and it is a price publication. Besides timings, it also contains many useful information like refund rules, retiring rooms, charges to luggeage and so on. Upto 1985, information of reservation quota of seats and berths that is operated on various stations was also included. This was really facilitating the passengers. However, this practice is discontinued suddenly for no valid reason. Now, the experience is that of transfer of quota from one station to another goes silentely and without notice. Being a price publication, time-table must not miss such a vital information.

Therefore, a provision be made that time-table will contain not only timings but also all relevant and useful information including operation of quota of reservation on various stations and will be printed and made available to public at a reasonable price at railway book stalls.

Section (47-2) simply says keeping of time-table in force in the office of station master needs above amendment.

Along with the above insertion of printing of time-table another point is that of proportionate refund of fares in case of delay of trains. We know, in western countries if a train arrives at the station, late, proportionate sum of fare is refunded. In India also, this principle is accepted for Q T S Goods Transport. The administration assures timely transport of QTS Goods and in case of delay proportionate refund of freight. The

(CONTD..3/-..)

same should be accepted in transport of passengers and a provision be made in section 49 that if a train arrives late, proportionate amount will be refunded by the railways. This would be an automatic cheack on transport efficiency.

The second provison to Section 51, empowers a rail servant to change the name of a passenger having reserved a seat or a berth. This power nullifys the importance of reservation. Therefore, it requires total deletion. This also requires to omit Clause (C) of subsection (2) of section 58 relating to the power of Govt.to make rules in respect of changes in the names of passengers.

Section 58, empowers to frame various rules. As many as seven Clauses are included in it. However, no where, rules to provide other facilities and services are inserted. For instance, we experience only one TT or TC managing more than two bogies, absence of a doctor or meal service on the station, absence of drinking water, insufficient room to seat on the stations, absence of electrician on train etc. All these are essential services to the commuters, therefore one more cluse enumarating all these services be inserted in section 58, thus making compulsory on administration to provide all these amenities to the passengers.

4. Chapter IX :- Carriage of Goods :- Section 71 deals with punitive charge for overloading of a wagon. This is a new provision, previous section 70 lays down maximum carrying capacity shall not be exceeded. In case it exceeds, section 71, it will attract penalty. Here no other details are given and wording suggest absolute powers to the staff. It is one sided provison. Previously, in case of excess than permissible capacity, only proportionate freight was to be paid. When one section clarly prohibits transport of goods more than permisible capacity it should be strictly followed. If more weight is found it should be removed No wrong be corrected by charging penalty inviting danger to the safety. Therefore, section 71 requires deletion.

Section 76 and 77 provides for weightment so also reweightment. Here also it gives absolute powers to the staff at a very lower rank. It denies right of re-weightment. It is only if, the servant is satisfied, he will allow it. In many cases, we experience shortages. Therefore, these sections need reconsideration and it should be allowed as a right of the customers.

(CONTD..4/-..)

5. Chapter XV :- Penalties and Offences : This chapter includes section 142 to section 192. It means maximum about, 1/4th Bill discusses penalties to be awarded. Here all penalties are made very stringent and minimum are orescribed below which even court can't award less punishment. Therefore all these provisons requires total reconsideration.

Funny enough, whereas a passenger will be awarded in many cases, imprisonment, but as per section 188, if a rail servant fails to give notice of accident, he is punishable with a fine only upto 50 rupees. This discrimination must also be removed.

6. Chapter XVI :- Miscellaneous : Section 196 deals with bar of jurisidiction of civil courts, even if anything wrong or contrary to the Act and Rules made by the administration. This is against principle of natural justice. Therefore, it must be deleted.

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CONFIDENTIAL

LOK SABHA SECRETARIAT
(Committee Branch-II)

JOINT COMMITTEE ON THE RAILWAYS BILL, 1986.

MEMORANDUM NO. 12

[Comments/suggestions received from Mrs. Shalini Sirur, Chairman, Consumer Guidance Society of India, Hutment J. Mahapalika Marg, Opp. Cama Hospital, Bombay-400001.]

The consumers are very much agitated about the proposal regarding provision of empowering the railway employees to cancel confirmed bookings. This provision if enacted into law will lead to corruption. Law-abiding citizens who purchase tickets in advance will be at the mercy of unscrupulous elements. Hence the consumers are opposed to the above proposal.

Auction of goods not cleared within seven days of its reaching destination without giving any notice is objected to [clause 88 (1)] for there is no fixed time within which a railway parcel will reach from the senders to the receivers station. Hence more time, may be a fortnight could pass before auctioning or the person concerned be informed on telephone or by postcard.

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page..2/-

SUBJECT- Joint Committee on the Railways Bill,1986

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The Statement of objects and reasons at page-64 of the Railways Bill,1986 shows that the new Bill has been introduced taking into account:-

a) That most of the Railways have been taken over by the Government of India.

b) The Railways are being administered by Zonal Railways, the position of which,had been made clear in the Bill.

c) Power has been given to the Central Government to fix the rates for the carriage of passengers and goods over the railways, in place of existing provisions to fix the maximum and minimum rates for such carriage and leaving the fixation of specific rates to the Railway administration. Further the Railway administrations have been authorised in the Bill to specify lump sum rates for the carriage of goods.

d) The Railway receipt has been recognised as a document of title.

e) The monetary value of liability of the Railway administrations has been limited to the declaratior of valuation/price of the goods entrusted; and

f) The offences have been rationalised and penalties have been made stringent including the provisions for minimum punishment for many of the offences.

We as Lawyers are primarilyconcerned with Chapters XI and XIII of the Railways Bill.

i) So far as Clause 104 of the Bill is concerned which provides for giving of notice of claim to the Railway Administration, the clause should be liberalised and in Sub-clause (2) of Clause 104, after the words " Any information demanded of enquiry made in writing from,or any complaint made in writing to, any of the Railway Administrations" the words" any Officer authorised by such Railway Administration to deal with the claims" may be added.

page..2/-

Sub-Clause(3) of Clause 104 is against the number of judicial decisions, where it has been held that no notice of claim is necessary in case of refund of over-charge.So this sub-clause may be deleted.

ii) Clause 105 (1) of the Bill is unnecessary and the same may be deleted and Clause 105 may be reframed as follows:-

> " Notwithstanding anything contained in any other law for the time being in force, a suit for compensation for loss, destruction, damage, deterioration or non-delivery of goods, shall be instituted only in a court having jurisdiction over the place at which the goods were entrusted for carriage or as the case may be, were placed in which the destination station lies or the loss, destruction, damage, deterioration occurs."

iii) Clause 107 which provides for a suit for compensation for personal injury etc. may similarly be amended and the words " Notwithstanding anything contained in any other law for the time being in force" be added before the words-
" A suit for compensation for the loss of life or personal injury etc. etc." in clause 107.

iv) Chapter XIV regarding regulation of hours of work and period of rest, the entire chapter may be deleted and be suitably inserted in a Service rule under Article 309 of the Constitution of India as most of the Railways are owned and being run by the Central Government.

Br-Sahu
20.1.87

(B.K.SAHU)
MEMBER
ORISSA STATE BAR COUNCIL
CUTTACK

Joint Committee on the
Railways Bill, 1986

PASSENGER'S & TRAFFIC RELIEF ASSOCIATION

MEMORANDUM NO. 14

Estd : 1915

IN THE SERVICE OF INDIAN PASSENGERS
FOR
OVER 70 YEARS

SUGGESTIONS
ON
RAILWAYS BILL NO: 46 OF 1986
PRESENTED
TO
SHRI. ARVIND NETAM,
CHAIRMAN
SELECT COMMITTEE
OF
MEMBERS OF
BOTH HOUSES OF THE PARLIAMENT

20TH MARCH 1987

ADDRESS:

346, Anand Bhavan, 3rd Floor, Dr. D.N. Road,
Fort, Bombay - 400 023.

Tel : 2043168

THE PASSENGER'S AND TRAFFIC RELIEF ASSOCIATION
BOMBAY

SUGGESTED AMENDMENTS

TO THE RAILWAYS BILL 1986 No.46 OF 1986 FOR CONSIDERATION OF THE JOINT COMMITTEE OF BOTH HOUSES OF PARLIAMENT.

CHAPTER I
PRELIMINARY

New Bill Clause Column No.(1)	Amendments Suggested Column No.(2)	The amended Caluse after incorporating the amendement in column No.(2), if accepted, shall read as under:- Column No.(3)	Remarks Column No.(4)
Clause 1 (1)	NIL	NIL	N I L
Clause 1 (2)	Delete the proviso and the clause 1(2) and replace it with the following :- "It shall come into force on the date the Central Government notifies in the Official Gazettee"	It shall come into force on the date the Central Government notifies in the official Gazettee	Chapter I Caluse (3) of old act 1890 Different dates for different provisions are not desirable. The entire Act should come in force all over India at one time.
Clause 2 Definations :	----	----	----
Caluse 2 Sub-clause 23 "Lump Sum Rate"	Delete and replace it with the following:- "Lump Sum Rate means the rates fixed by the the Government for bulk carriages of goods and for any service in relation to such carriage"	"Lump Sum rate" means the rates fixed by the Government for bulk carriage of goods and for any service in relation to such carriage.	The present defination is discriminatory as also discretionary

CHAPTER II & III

NIL

Contd..Page-2

Column 1	Column 2	Column 3	Column 4
	CHAPTER - IV CONSTRUCTION AND MAINTENANCE OF WORKS		
Clause 15 Sub-clause (2)(b)	Delete existing clause 15(2)(b) and replace with the following : "Save as here in after in this chapter Provided, a railway administration shall not, except on the requisition of the state Government, be compelled to defray the cost of executing any further or additional accommodation works for the use of the owners or occupiers of the lands after the expiry of ten years from the date on which Railway passing through the lands was first opened for public traffic".	Save as here in after in this chapter provided, a railway administration shall not except on the requisition of the state Government, be compelled to defray the cost of executing any further or additional accommodation works for the use of the owners or occupiers of the lands after the expiry of ten years from the date on which the Railway passing through the lands was first opened for public traffic.	
Clause 16 Sub-clause (1)	Delete the phrase starting from..... "at the expense of the owner or occupeor or of the State Government or the local authority as the case may be", and Add the following at the end of the section 16 (1) :- "The expense shall be shared equally between the Railway & the other concerned party".	If an owner or occupier of any land affected by a railway considers the works made under clause 15 to be in-sufficient for the use of the land or if the State Government or a local authority desires to construct a public road or otherworks, across, under or over a railway, such owner or occupier or as the case may be, the State Government or the local authority, may, at any time, require the railway Administration to make such further accognodation works are considered necessary and are agreed to by the railway administration. The expenses shall be shared equally between the Railway and other concerned party".	Section 12 of the old Act. It is desired that the expenses should be shared equally by the parties. So that there is no financial burder on one party and as a result the public project will not suffer.
Clause 18 Sub-clause (2) Over-bridge and under bridge.	Delete the existing section 18(2) and replace it with the following:- "The railway administration may require the State Government or the local authority, as the case may be, as a condition of executing any work under sub-section (1), to undertake to pay its proparation of the cost as per suggested amendment to clause 6(1) above. The total cost of the said work shall be shared equally by the Railway administration and the Local Authority or State Government as same may be."	The railway administration may require the State Government or the local authority, as the case may be, as a condition of executing any work under sub-section (1), to undertake to pay its proportion of the cost as per suggested amendment to clause 18(1) above. The total cost of the said work shall be shared equally by the Railway administration and the Local Authority or State Government as the same may be.	

Contd..Page..3

Column 1	Column 2	Column 3	Column 4
	CHAPTER - V		
	N I L		
	CHAPTER - VI		
	FIXATION OF RATES		
Clause 28 **Sub-clause (1) Power to fix rates**	Delete the words "from time to time" and replace with "immediately after the budget every year", (ii) after the words "goods and" inline four add the words "passengers and" (iii) at the end of the sub-section (1) add the following:- "The rates so fixed shall remain in operation till the next budget".	The Central Government may, immediately after the budget every year by a general or special order fix for the carriage of passengers and goods, rates for the whole or any part of the railway and different rates may be fixed for different classes of goods and passengers and specify in such order conditions subject to which such rates shall apply. The rates so fixed shall remain in operation till the next budget.	It is desired that "rates" so fixed should also be for a fixed period.
Clause 28 Sub-clause (2)	Delete the words between two comas -"by a like order,"- and replace it with the following in between the comas "by a like order and for a period indicated in sub-cakse (1)".	The Central Government may, by a like order and for a period indicated in sub-clause (1) fix the rates of any other charges incidental to or connected with such carriage including demurrage and wharfage for the whole or any part of the railway and specify in the order the conditions subject to which such rates shall apply.	
Clause 30 Power of railway administration to charge certain rates.	After sub-clause (d) add the following as sub clause (e) :- "or (e) All the above rates shall be same for a-like traffic or services and shall be non-discriminatory."	or (e) All the above rates shall be same for a-like traffic or services and shall be non-discriminatory".	

Contd...Page 4

Column 1	Column 2	Column 3	Column 4
	CHAPTER VII		
	RAILWAY RATES TRIBUNAL		
Clause 31 such clause (2) constitution of the Rilway rates tribunal.	Delete "two" in line one and replace it with "four" sub-clause (2) In the line 3 for the word: "Two" read- "Four" and in the line 6 for the word: "the other" read: "Second" At the end of the sub-clause (3) add the following- " the third shall be one representing the passenger organisation and the fourth shall be one representing the treader's organisation. The last two shall be appointed by Central Government from amongst the recoganised organisations,"	The Tribunal shall consist of a Chairman and four other members to be appointed by the Central Government. A person shall not be qualified for appointment as the Chairman of the Tribunal unless he is, or has been a Judge of Supreme Court or of a High Court and of the other four members one shall be a person, who, in the opinion of the central Government, has special knowledge of the commercial industrial or economic conditions of the country, and the second shall be a person, who, in the opinion of the Central Government, has special knowledge and experience of the commercial working of railways and the third shall be one representing the passengers organisation and the fourth shall be one representing the treaders organisation. The last two shall be appointed by Central Government, from amongst the recoganised organisations.	It is felt that one member each must be taken from the passengers and treaders organisations to give fair representation to the rail users on this important Tribunal
Clause 34	After the sub-section 34(c) add new sub-section 34 (d) as follows :- "(d) has shown a favour in fixing lump sum rates".	(d) has shown a favour in fixing lump sum rates .	This is a must to avoid favouritism, (please see defination clause.)
Clause 35 (d)	Delete the existing sub-clause (d) of clause 35 (i.e. "(d) lum-sum rates")		

Contd....Page 5.

Column 1	Column 2	Column 3	Column 4
Clause 81	At the end of the 81, add the following:- "However an appeal shall lie with the Supreme Court"	No suit shall be instituted or proceeding taken in respect of any matter which the Tribunal is empowered to deal with or decide under this Chapter. However an appeal shall lie with the Supreme Court	The principle of natural justice demand that aggrieved party be given a right to appeal to Supreme Court.
Clause 83	At the end of the clause 83, add the following:- "after due notice to all concerned original parties.	Where a railway administration considers that since the date of decision by the Tribunal there has been a material change in the cicumstances on which it was based, it may, after the expiry of one year from such date, make an application to the Tribunal after making such inquiry as it considers necessary vary or revoke the decision after due notice to all concerned orginal parties.	

CHAPTER VIII

CHARRIAGE OF PASSENGERS

Column 1	Column 2	Column 3	Column 4
Clause 88 sub-clause (1)	Add the following 88(1)(v) after (iv) "(v) the distance between two places in kilometers"	88(1)(v) (v) the distance between two places in kilometers.	This is essential requirement for a passengers to varify correctness of the fare charged.
Clause 90	Delete the existing clause 90 and replace it with the following:- "If a ticket is returned for cancellation, the railway administration shall cancel the same and refund such amount as may be prescribed. However if the ticket is returned for cancellation 48 hrs. prior to the departure of the train full amount paid except reservation charges, if any, shall be refunded.		

Column 1	Column 2	Column 3	Column 4
Cause 51	Delete the second proviso of clause 51 i.e. delete the following. "provided further that a Railway servant authorised in this behalf may permit change of name of a passenger having reserved a seat or berth subject to such circumstances as may be prescribed." and rewrite the clause 51.	A ticket issued in the name of a persons shall be used only by that person: Provided that nothing contained in this section shall prevent mutual transfer of a seat or berth by passengers travelling by the same train,	provision under old Rly.Act be maintained.
Clause 53 sub-clause(2)	At the end of Sub-clause(2) add the following: "In such case/s no extra charges or penalty shall be recovered".	A person obtaining permission under sub section (1) shall ordinarily get a certificate from the railway servant referred to in that sub-section that he has been permitted to travel in such carriage on condition that he subsequently pays the fare payable for the distance to be travelled. In such case/s no extra charges or penalty shall be recovered.	
Clause 58 Sub-clause2 (d)	Delete sub-calus 2(d) and rewrite the other sub-clause as: 2(d), 2(e) and 2(f)		This is a controvisial issue. It is likely that undue advatage may be taken by unscruplu-lies elements.
	CHAPTER IX		
	CHARRIAGE OF GOODS		
Clause 69 Sub-clause(d)	Add the following proviso at the end of the sub-clause (d) "provided only if the statement given under sub-clause (i) isproved to be false"	Where any goods have been detained under sub-section (3) for examination, the cost of such detention and examination shall be borne by such owner or person, the congignee or the endorsee, as the case may be, and the railway administration shall not be liaple for any loss, damage or deterioration wich may be caused by such detention or examination. Provided only if the statement given under sub-calus (i) is proved to be flase.	This is to avoid wrongful detention and harrassment of innocent parties.

Contd.Page 7.

Column 1	Column 2	Column 3	Column 4
Clause 67	Add the following at the end of the clause 67. "However, in such cases the railway administration shall not be entitled to claim or charge any excess fare or frieght on these grounds".	Where due to any cause beyond the control of a railway administration or due to congestion in the yard or any other operational reasons, goods are carried over a route other than the route by which such goods are booked, the railway administration shall not be deemed to have committed a breach of the contract of carriage by reason only of the deviation of the route. However in such cases the railway administration shall not be entitled to claim or charge any excess fare or freight on these grounds".	
Clause 68.	Delete the existing clause and replace it with the following :- "A railway administration shall not make or give any undue or unreasonable preference or advantage to, or in favour of, any particular person or railway administration or any particular description of traffic, in any respect what so-ever, or subject any particular person or railway administration or any particular description of traffic to any undue or unreasonable prejudice or disadvantage in any respect whatsoever".	A railway administration shall not make or give any undue or unreasonable preferance or advantage to, or in favour of, any particular person or railway administration or any particular description of traffic, in any respect what so-ever or subject any particular person or railway administration or any particular description of traffic to any undue or unreasonable prejudice or disadvantage in any respect whatsoever."	Section 28 of the old act is more specific and thereis no discrimination made between the public and railway administration because the same clause should continue
Clause 77. Sub-caluse 2.	At the end of sub-caluse, add the following:- "Provided further that no such charges or demurrage shallbe levied if the request for reweighment is found to be justified".	Where a request for weighment is allowed by the railway administration, the consignee or the endorsee shall pay such charges as may be prescribed and the demurrage charges, if any. Provided further that no such charges or demurrage shall be levied if the request for reweighment is found to be justified.	In case genuine request which has been proved to be correct after the weighment the person should not be punished by extra charges for re-weighment.

Contd...Page 8

Column 1	Column 2	Column 3	Column 4
Clause 81 Sub-clause 3.	In line second of sub-clause 3 for the words "Seven days" read "Fifteen days".	The railway administration shall give a notice of not less than fifteen days of the public auction under clause (b) of sub-section (2) in one or more local newspapers or where there are no such newspapers in such manner as may be prescribed.	7 days notice is too short a period hence at least 15 days notice is felt necessary.
Clause 82 Sub-clause 2(b)	In line fifth of sub-caluse 82 (2) (b) for the words "Seven days" read: "Fifteen days"	In the case of an unclaimed consignment which is not perishable in nature, cause a notice to be served upon the consignee if his name and address are known, and upon the consignor if the name and address of the consignee are not known, requiring him to remove the goods within a period of fifteen days from the receipt thereof and if such notice cannot be served or there is a failure to comply with the requisition in the notice, sell such consignment in the manner provided in clause (b) of sub-section (2) of section 81.	More time is considered appropriate before the goods are disposed off.
Clause 85 Sub-caluse 4.	At the end of the sub-clause 4, Add the following:- "The rules will also be made available for sale at a prescribed price, to any person at all important railway stations".	Every railway administration shall keep at each station a copy of the rules for the time being in force under this section, and shall allow any person to refer to it free of charge at all reasonable hours. The rules will also be made available for Sale at a prescribed price, to any person at all important railway stations.	It is felt necessary that all such rules concerning public be provided on payment basis.

Contd..Page 9.

CHPATER X

SPECIAL PROVISIONS AS TO GOODS BOOKED TO NOTIFIED STATIONS

Column 1	Column 2	Column 3	Column 4
Clause 87 Sub-clause 3.	In the line fourth of the sub-clause 3 for the words "Seven Days" read "fifteendays"	There shall be exhibited at a conspicuous place at each notified station a statement in the prescribed form setting out the description of the goods which by reason of the fact that they have not been removed from the station within a period of fifteen days from the termination of transit thereof are liable to be sold, in accordance with the provisions of sub-section (1) of section 88 by public auction and the dates on which they would be so sold:	Before the goods are disposed of 15 days period is felt essential.
Clause 87 Sub-clause 4.	After the sub-clause 4(c) Add the new sub-clause 4(d) as follows :- "(d) the consignee concerned."	(d) the consignee concerned.	It is suggested that a provision be made at the time of booking to obtain the exact address of the consignee where known.
Clause 88 Sub-calase 1.	In line three of sub-clause (1) of Clause 88 for the words "seven days" read "fifteen days"	If any goods entrusted for carriage to any notified station by a train intended solely for the carriage of goods are not removed from such station by a person entitled to do so within a period of fifteen days after the termination of transit thereof at such station, the railway administration may, subject to the provisions of sub-section (2), sell such goods by public auction and apart from exhibiting, in accordance with the provisions of sub-section (3) of section 87, a statement containing a description of such goods, it shall not be necessary to give any notice of such public auction, but the date on which such auction may be held under this sub-section may be notified in one or more local newspapers, or where there are no such newspapers, in such manner as may be prescribed:	The existing provision is in violation of the principles of natural "justice". Hence "notice" is absolutely essential as under old act u/s 55 (2)

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CHAPTER XI

RESPONSIBILITIES OF RAILWAY ADMINISTRATIONS AS CARRIERS

Column 1	Column 2	Column 3	Column 4
Clause 91	Add the foot Note at the end of clause 91 after the proviso clause as under:- NOTE:- Act of public enimies means any act..	NOTE:- Act of public enimies means any act Add the defination of "public enimies" here	It is necessary to define and quality the word "public enimies".
Clause 91. (e)	The cause listed at (e) be amended as follows:- Add the word "Public" at the begining of the sentence.	(e) Public order or restrictions imposed by the Central Government or a State Government or by an officer or authority subordinate to the Central Government or a State Government authorised by it in this behalf;	
Clause 93	In line fifth of the clause 93 delete the following sentence in between "or....or" i.e. "or in vechicles or vessels which are defective" and rewrite the clause as it is.	When any goods which, under ordinary circumstances, would be carried in covered vehicles or vessels and would be liable to damage if carried otherwise, are, at the request of the consignor recorded in the forwarding note, entrusted for carriage by railway in open vehicles or vessels or not fully covered, the railway administration shall not be responsible for any destruction, deterioration or damage which may arise by reason of the goods being so carried.	
Clause 99	Delete the existing clause 99 and replace the same with the following :- "A railway administration shall be responsible for loss, destruction, damage or deterioration of any consignment proved by the owner to have been caused by the delay or detention in their carriage unless the	A railway administration shall be responsible for loss, destruction, damage or deterioration damage or deterioration of any consignment proved by the owner to have been caused by the delay or detention in their carriage unless the railway administration proves that the delay or detention arose	The old act clause 76 does not in our opinion requires any amendment hence to be retained.

Contd...Page..11.

Column 1	Column 2	Column 3	Column 4
	Railway administration proves that the delay or detention arose without negligence or misconduct on the part of railway administration or of any of its servants"	without negligence or misconduct on the part of railway administration or any of its servants"	
Clause 97 Sub-clause 2(b)	At the end of the sub-clause 2(b) after the words "by railways" add the following:- "and the railway administration has recorded this fact in the consignment note".	(b) that such defective condition or defective or improper packing was not brought to the notice of the railway administration or any of its servants at the time of entrustment of the goods to the railway administration for carriage by railways and the railway administration has recorded this fact in the consignment note.	It is necessary that the fact of not bringing to the notice of railway administration should be recorded by the railway administration The onus of proof should be on the Railway administration.
Clause 109 Sub-clause (1)	At the end of the sub-clause (1) and after the sentence "within a period of six months from the date of entrustment of the goods". Add the following :- "or from the date of delivery whichever is later".	Within a period of six months from the date of entrustment of the goods or from the date of delivery whichever is later.	
	CHAPTER XII **ACCIDENTS**		
Clause 118	Add the following at the end of section 118- "Similarly report of the commissioner under clause 112 or the report of the Railway administration under clause 113 shall be submitted to the Central Government and in case of death of human being or serious injury to the property, the report shall be placed before both houses of Parliament".	Where any accident of the nature not specified in section 111 occurs in the course of working a railway, the railway administration within whose jurisdiction the accident occurs, may cause such inquiry to be made into the causes of the accident, as may be prescribed by the Central Government. Similarly report of the commissioner under clause 112 or the report of the	

Contd .Page..12

Column 1	Column 2	Column 3	Column 4
		Railway Administration under clause 113 shall be submitted to the Central Government and in case of death of human being or serious injury to the property the report shall be placed before both houses of Parliament.	
Clause 120 Sub-Clause (2)	In sub-clause 2 (f) at the end, add the following: "and also the matter regarding publication of the report of commissioner of Safety within a stipulated period for the benefits of the public".	(f) The nature of inquiry to be made by a railway administration into the causes of an accident under section 118 and also the matter regarding publication of the report of commissioner of Safety within a stipulated period for the benefit of the public.	It is felt that the report of the commissioner of safety be made public within a period of 7 days from the date acceptance of the report so that the public will know the exact causes of Accident u/s. 118.

CHAPTER XIII

LIABILITY OF RAILWAY ADMINISTRATION FOR DEATH AND INJURY TO PASSENGERS DUE TO ACCIDENTS

Clause 122 Sub-clause (1) Extent of Liability.	Add the following sentence in line three of sub-clause (1) after the words "other accident to a train" and before words "or any part" : "including the accident/s at manned and unmanned level crossings".	When in the course of working a railway, an accident occurs, being either a collision between trains of which one is a train carrying passengers or the derailment of or other accident to a train including the accident/s at manned and unmanned level crossings or any part of a train carrying passengers, then whether or not there has been any wrongful act, neglect or default on the part of the railway administration such as would entitle a passenger who has been injured or has suffered a loss to maintain an action and recover damages in respect thereof, the railway administration shall,	This is suggested as to be more specific regarding nature of accidents.

contd...page 13.

Column 1	Column 2	Column 3	Column 4
		notwithstanding anything contained in any other law to the contrary, be liable to pay compensation to the extent set out in sub-section (2) and to that extent only for loss occasioned by the death of a passenger dying as a result of such accident, and for personal injury and loss, destruction, damage or deterioration of goods owned by the passenger and accompanying him in his compartment or on the train, sustained as a result of such accident.	
Clause 122 sub-clause (2)	Delete the existing sub-clause (2) and replace it with the sub-clause (2) as under :- The liability of Railway administration under this section shall in no case be less than Rs.50,000/- and more than Rs.2 lacs, in case of death of any one person or his being totally incapacitated depending upon his earnings and the duration of his completing 58 years of age".	The liability of Railway administration under this section shall in no case be less than Rs.50,000/- and more than Rs.2 lacs, in case of death of any one person or his being totally incapacitated depending upon his earnings and the duration of his completing 58 years of age.	
Clause 122 Sub-clause 3	In sub-clause (3) add the following at the end:- "Or on Railway track or at any other Railway premises".	(3) The provisions contained in sub-section (1) shall also apply to a railway servant on duty on the train or on Railway track or at any other Railway premises.	
Clause 122 new sub-clause 4	After the sub-clause (3) of clause 122 Add the following new sub-clause (4):- "(4) The amount so paid as compensation shall be tax free"	(4) The amount so paid as compensation shall be tax free.	This is a real need of time otherwise the word compensation as no meaning at all.

Contd...Page...14

Column 1	Column 2	Column 3	Column 4
Clause 125 Addition new Sub-clause(5)	After the sub-clause (4) of clause 125 Add the following new sub-clause (5) :- "(5) The payment of the amount of full and final compensation shall be made to the claimant within a period not exceeding 180 days from the date of accident".	(5) The payment of the amount of full and final compensation shall be made to the claimant within a period not exceeding 180 days from the date of accident.	The payment of compensation takes unduly long time and hence specific period is necessary so that it becomes mendatory on the part of the authority to settle the dues within the specific period.
Clause 131 sub-clause (3)	At the end of the sub-clause (3) Add the following after the word "is payable":- "but not exceeding a period of 180 days from the date of accident"	Any compensation deposited with the Claims Commissioner under this section shall, with the least possible delay, be paid to the applicant for compensation to whom it is payable but not exceeding a period of 180 days from the date of accident.	
Clause 132 Sub-clause (1)	At the end of the sub-clause (1) Add the following after the word "Occurred":- "or at or near the place of his/her residence".	Any person aggrieved by an order of the Claims Commissioner refusing to grant compensation, or as to the amount of compensation granted to him, may prefer an appeal to the High Court having jurisdiction in the place where the accident occurred or at or near the place of his/her residence.	This is essential as a matter of convenience and relief to the claimant.
Clause 132 Sub-clause (2)	In the sub-clause (2) substitute "Six months" for the words "Ninety days"	The period of limitation for an appeal under this section shall be six months.	

CHAPTER XIV
REGULATION OF HOURS OF WORK AND PERIOD OF REST

Suggestions-

"It is felt that there should be a ceiling on maximum continuous duty hours for running operational staff and under no circumstances, this ceiling period should be allowed to be exceeded to avoid accidents".

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CHAPTER XV

PENALTIES AND OFFENCES

Column 1	Column 2	Column 3	Column 4
Clause 142 Fraudulently travelling or attempting to travel without proper pass or ticket	At the end of clause 142 sub-clause (1) Add the following second proviso after the first proviso ending within the "fine of two hundred and fifty Rupees":- "Provided further that if the passenger is ready and willing to pay all charges on demand of any railway servant authorised in this behalf,no further action, as provided in this clause shall lie. The charges recoverable shall be maximum of Rs.50/- for suburban trains and Rs.150/-for main line trains. In addition to this, charges as indicated in clause (2) and (3) of clause 142 shall also be recoverable.	Provided that in the absence of special and adequate reasons to the contrary to be mentioned in the judgement of the court, such punishment shall not be less than imprisonment for a term of one month and a fine of two hundred and fifty rupees. Provided further that if the passenger is ready and willing to pay all charges on demand of any railway servant authorised in this behalf, no further action, as provided in this clause shall lie. The charges recoverable shall be maximum Rs.50/- for suburban train and Rs.150/- for main line trains. In addition to this, charges as indicated in clause (2) and (3) of clause 142 shall also be recoverable.	Imprisonment provision should apply only to those passenger who do not pay the fare and the penalty. Otherwise, it is felt, that Railway servants shall be -come richer and the railways poorer!
Clause 150 Drunkenness or nuisance.	Delete the sub-clause (a) and replace the same with the following :- "(a) is in a state of intoxication and thereby conducts himself in such-manner as to cause annoyance to any person, or"	(a) is in a state of intoxication and thereby conducts himself in such manner as to cause annoyance to any person, or.	Please see section 510 of Indian Penal code.
Clause 150	After sub-clause (c) the para starting with "he may be removed from the railway by any railway servant and shall, in addition to the forfeiture of his pass or ticket, be punishable with imprisonment which may extend to six months and with fine which may extend to five hundred rupees" be deleted and be replaced with the following :- "he may be removed from the railway by any railway servant and shall, in addition to forfeiture of his pass or ticket, be punishable with imprisonment which may extend to six months or with fine which may extend to five hundred rupees or with both.	He may be removed from the railway by any railway servant and shall, in addition to forfeiture of his pass or ticket, be punishable with imprisonment which may extend to six months or with fine which may extend to five hundred rupees or with both.	

contd..page..16

Column 1	Column 2	Column 3	Column 4
Clause 150	The entire the Proviso alongwith (a) and (b) be deleted		
Clause 152 sub-calue 1	Sub clause (1) in line four substitute "or" for "and". At the end of sub-clause (1) after the word "rupees" add "or both". Delete the "Proviso" in sub-clause (1).	If any person enters upon or into any part of a railway without lawful authority, or having lawfully entered upon or into such part misuses such property or refuses to leave, he shall be punishable with imprisonment for a term which may extend to six months or with find which may extend to five hundred rupees or both.	
Clause 159	In clause 159 last line substitute "five years" for the word "one year".	If any person in a rash and regligent manner does any act, or omits to do what he is legally bound to do, and the act or omission is likely to endanger the safety of any person travelling or being upon any railway, he shall be punishable with imprisonment for a term which may extend to five years or with fine, or with both.	This is also a serious offence and hence the punishment should also be more
Clause 161	The last two lines after the line (c) be deleted and replaced with following :- "he shall be punishable with fine which may extend to fifty rupees."	(c) opens the door of any carriage while the train is in motion. he shall be punishable with fine which may extend to fifty rupees.	The offence is not to that extent as to attract imprisonement. so serious.
Clause 165.	In the last two line substitute "three months" for the word "One month" and substitute "two hundred" for the word "one Hundred".	If any driver or conductor of any vehicle while upon the premises of a railway disobeys the reasonable directions of any railway servant or police officer, he shall be punishable with imprisonment for a term which may extend to three months or with fine whichmayextend to two hundred rupees or with both.	
Clause 173	Delete the last "para" after sub-clause (b) and replace with the following:- "he shall be punishable with imprisonment for a term which may extend to one month or with fine which may extend to two hundred and fifty rupees or both.	He shall be punishable with imprisonment for a term which may extend to one month or with fine which may extend to two hundred and fifty rupees or both.	

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Column 1	Column 2	Column 3	Column 4
Clause 179 Sub-clause 3	At the end of sub-clause (3) after the word "rupees" add the following:- "or liable for removal from the train by any railway servant on making a complaint by a passenger if smoking is not stopped".	Whosoever contravenes the provisions of subsection (1) or sub-section (2) shall be punishable with fine which may extend to one hundred rupees or liable for removal from the train by any railway servant on making a complaint by a passenger if smoking is not stopped.	
Clause 182	In the proviso of clause 182 under (i) the punishment for offence (a) and (b) prescribed be substituted as follows:- for "three months" Read "One month" and for "Five hundred rupees" Read "Two Hundred Rupees".	If it relates to the offences specified in clauses (a) and (b) be less than imprisonment for a term of one month and a fine of two hundred rupees;	
Clause 188	In the last line substitute the amount of fine as follows :- For "fifty rupees" Read "Two hundred fifty rupees".	If any railway servant omits to give such notice of an accident as is required by section 111 or in the form and manner prescribed under section 120, he shall be punishable with fine which may extend two hundred fifty rupees.	
	CHAPTER XVI MISCELLANEOUS		
Clause 193	After sub-clause 193(2) add new clause (3) as follows:- (3) A railway administration may for the purpose of better co-ordination between themselves and its "users" constitute at different levels, various users consultative committees and give due consideration to its views while taking decisions on matters connected with train scheduling passenger facilities, amenities and safety.	(3) A railway administration may for the purpose of better co-ordination between themselves and its "User" constitute at different levels various users consultatives committees and give due consideration to its views while taking decisions on matters connected with train scheduling passengers facilities and amentities safety.	
Clause 210	At the end of clause 210, Add the following:- "NOTE": The draft rules shall be placed before the National Railway Users Consultative Committee and Zonal Rly. Users' Consultative committee for their comments before the draft rules are laid before both the houses of parliament with above comments.	NOTE: The draft rules shall be placed before the National Railway Users' and Zonal Railway Users' Consultative Committees for their comments before the draft rules are laid before both the houses of parliament with above comments.	

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Annexure No. 14A

Estd : 1915

IN THE SERVICE OF INDIAN PASSENGERS
FOR
OVER 70 YEARS

GENERAL COMMENTS

ON
RAILWAYS BILL NO: 46 OF 1986
PRESENTED
TO
SHRI. ARVIND NETAM,
CHAIRMAN
SELECT COMMITTEE
OF
MEMBERS OF
BOTH HOUSES OF THE PARLIAMENT

26TH MARCH 1987

BY SHRI BALKRISHNAN P. GUPTA
PRESIDENT

PASSENGER'S & TRAFFIC RELIEF ASSOCIATION

346, Anand Bhavan, 3rd Floor, Dr. D.N. Road,
Fort, Bombay - 400 023.

Tel : 2043168

Members of the Passengers' And Traffic Relief Association (PATRA) Sub-Committee of the Railway Bill No. 46 of 1986

1. Shri Chandrakant K. Vora, (Convener), Member, SRUCC, Western Railway.

2. Shri Balkrishan P. Gupta, President, PATRA.

3. Shri V. N. Parekh, Vice-President, PATRA.

4. Shri Devidas Kantharia, Hon. Secretary, PATRA.

5. Shri Navin F. Khanderia, Hon. Secretary, PATRA, Member, DRUCC, Central Railway.

6. Shri Mahesh V. Gandhi, Member, N.R.U.C.C., Western Railway.

7. Mrs. Pushpa Krishan, Member, Z.R.U.C.C., Western Railway.

8. Shri Chimanlal B. Gandhi, Member, DRUCC, Western Railway.

9. Shri Deepak J. Gandhi, President, Umargam Passengers' Association.

10. Shri P.B. Samant, Vice-President, Western Railway Study Group, Bombay.

11. Shri Mahendra Nath Jha, Hon.Treasurer, Member, SRUCC, Central Railway.

P A R T - II

GENERAL COMMENTS ON RAILWAY S BILL NO. 66 OF 1986.

A. STATEMENT OF OBJECTS :

i. The first and the foremost object of the proposed Bill should be "to improve the conditions of journey on Indain Railways & provide better services, facilities and safety to the people of India who are the real owners of Indian Railways."

ii. (a) Our strong Objection to the Object No. 2(ii) of the Bill empowering Central Government to fix the rates for the carriage of passengers & goods should be noted. Even when the Railways were in the private sector, the then British Government had thought it necessary to have parliamentary control over the rates charged for passengers and goods. Now that the railways are owned by the people, it is all the more necessary that they should have greater control over their own railways through their elected representatives. This is only possible through a parliamentary control. This right of the people cannot be vested with the government in respect of such an important matter affecting every citizen of India. Railways are an essentail and vital ser ice organisation having close and direct bearing on the economical and social development of the country and hence people must have an opportunity to express their views on railways pricing policy. This is perhaps the gravest error in the proposed New Bill with far reaching consequences.

b) Further the rate for all over the country must be uniform for all for all rail services, lest it might be abused for political purpos s. Wherever concession is to be given, the bill must be lay down the parameters like bulk, new railway lines, backward areas, students, physically handicapped etc. according to which the administration may determine rates for a specific period.

iii. With regard to Object No. 2(V) it is suggested that the objective of stringent penalties is welcome but they should not be so stiff as to breed corruption and or lead to harassment of innocent bonafide passengers. It is therefore suggested that the minimum imprisonment provided for the following offences be done away with and left to the wise discretion of the courts.

"Ticketless travellers, drunken passengers, false statement in a claim of compensation (Cl. 142, 143, 150 & 154)

The provision of penalties for suburban passengers without ticket should be minimum Rs. 10/- or double the fare whichever is higher, as at present.

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B. **ERRORS OF OMISSION :**

i. **Protection and Safety** : The biggest lacuna of the existing old Railway Act is with regard to the dual police forces operating on Indian Railways, of State Government (GRP) and the other of Railways (RPF). This is the root cause of passengers miseries as far as the protection and safety of their person and property are concerned. Whenever problems of law and order affecting persons or properties of passengers arise, one conveniently shelves its responsibility on the other, leaving innocent passengers at the mercy of vegabonds. As a result at the time and place of crime, passengers are without any real protection. Antisocial elements which have now become aware of this legal defect, have thus found railways an unshielded field for their nefarious activities.

If the democractic Government is really serious and sincere about providing safety and protection for the rail passengers and their properties, it should legally provide for a centralised police force under one authority for both passengers and railways through the new bill and make the railways hands stronger by providing it with sharp teeth to nab such criminals. This serious lacuna should be made good through a suitable provision in the New Bill, and if necessary even by suitably amending our Constitution.

ii. **Passengers Facilities and Amenities** : Strangely enough, there is no chapter on traffic facilities and amenities in the bill whereas there is one full chapter devoted to this in the existing Old Act. With the change in times and when the people of India have become the owners of the Indian Railways, have naturally expect better facilities and amenities as matters of right incorporated in the Act. They should have a better voice and better representation in the administration of Indian Railways, particularly with regard to matters concerning traffic facilities and amenities, like booking offices, train timings, foot-over bridges, toilets, lighting, fans, reservations, refunds, maximum loadings per boggies, grievances cell, safety and security etc. No legal obligation is cast on the railway Administration in the proposed bill. This serious omission should be made good by providing for a separate chapter devoted to passengers' amenities and facilities as in the old Railway Act.

iii. **Statutory Status to Consultative Committees** : The so called Rail Users' Consultative Committees now available at various levels are a legacy of the British Raj and have absolutely no legal status. Their decisions and recommendations are often ignored and even flouted by the Railway Administrations with impunity. They are formed and dissolved at the whims of the ministers. They just did not exist between 1982 to 1985. There are no proper norms for representation

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in quality or quantity. Consequently bonafide Railway users rarely find a place on them. Mostly irrelevant but influential individuals who rarely travel by Rail are accommodated. As a result genuine passengers difficulties rarely reach the ears of the administration. If the Government is sincere in giving due representation to the people of India on their own Railways, all such Rail Users Consultative Committee should be made statutory and compulsory, with definite terms irrespective of political party in power, with representation open only to genuine passengers and their organisations and must be wide enough to permit varied passengers' interests to be represented in proportion to traffic growth, with more frequent meetings than at present. If such committees are made from the grass root level, Railway and the Government would not only get a valuable feed back data for a better and smoother administration of railways but would also be able to increase its revenue and keep a better vigilance over antisocial elements, inside and outside the Railway Administration. For this purpose, every station have a Station Consultative Committee to look after local needs and grievances of the travelling public.

iv. <u>Provisions for Development</u> : There is no obligation cast on the Government for development of new lines in our country, while it has monopolised it. This is dog in the manger policy. While the Railways all over the world are marching with the time, most Indian trains are running at snail's pace, taking the same or even more time to travel today than that taken during the pre-independence era.

Railways play a pivotal role in the economic development of the country. Hence some legal obligation must be cast on the Railways to meet nation's growing needs of Rail transport, and should it fail, then other authorities, either state Government or Metropolitan Municipal Councils and others in private sector may be given the right to fill in the vaccum in the interest of faster economic development of our country.

v. The following clauses of the existing Railway Act of 1890 have not been included in the Railway Bill 1986. 3, 26, 27, 30, 31, 32, 33, 35, 37, 39, 42, 43, 48, 49, 50, 51, 52, 55, 57, 61, 72, 78, 79, 81, 83 to 134, 142, 143, 144 and 146.

It is essential that these clauses are studied by the Members of Parliament before they are allowed to be included or deleted in the interest of the travelling public.

.. 4 ..

v. Punctuality and Speed : To carry traffic safely, in time and without undue delay are the most essential obligations of any transport organisation. This responsibility should be clearly put on the Railway Administration as was by the existing old Act of 1890, Sec. 27.

C. SEPARATE SUBURBAN ZONES :

Almost all the major metropolitan cities like Bombay, Madras, Calcutta, and Delhi are being served by the suburba services of their respective zonal railways.

The character of these services is entirely different from the character of the upcountry trains which run between the length and breadth of our country. While the suburban Railways continuously run the services from early morning to late night, transporting millions of commuters at high frequency from one place to other for their jobs and business etc. whereas upcountry trains run few and far spaced services a day for far off destinations with much lesser passenger load than that by suburban services.

There is no substitute to a suburban Railway, whereas long journey passengers can also use air, road and in the coastal regions, water transport. The sphere of operation of City bus services is very limited by its own capacity and it cannot be treated as a substitute to the mass suburban Rail services.

A rough estimate reveals that out of the total number of passengers travelling daily by Indian Railways, as many as 56% use suburban trains. In doing so suburban Railways use little but intensive capital outlays, like tracks, coaches, stations and even the financial investment. They thus have a high potential for return on capital as compared to upcountry trains.

While running a suburban train different type of workmen are needed. These workmen have to remain ever vigilent. More care has to be given to these rakes, tracks, and stations with the result that they have their own suburban car sheds and maintenance shops. Similarly there are different types of amenities to be provided to the suburban passengers. The Railway administration has to deal with the ever increasing number of suburban passengers. This calls for specialised management skills, latest technical know-hows and calls for exclusive devotion with concentrated efforts.

It will thus be realised that clubbing suburban Rail systems with upcountry ones is not desirable, either financially, technically or managerially. Hence specific provision should be made in the Railway Act itself that each suburban section would be managed by an independent zone with a separate budget. This will give a new look and new dimension to this very important part of the Railway services as also lead to efficiencies and economics in both suburban and non-suburban zones through respective specialisations.

CONFIDENTIAL

JOINT COMMITTEE ON THE RAILWAYS BILL, 1986.

MEMORANDUM NO. 15

[Comments/suggestions received from the All India Railwaymen's Federation, New Delhi.]

Chapter/Clause	Comments/suggestions
Chapter VIII Clause 56	The following may be added as a sub-clause to this clause: "Every railway administration shall provide accommodation to a passenger holding a proper pass or ticket." It is no use specifying the maximum number of passengers to be accommodated in a carriage unless efforts are made by the railway administration to accommodate them. At present a number of second class passengers who give the maximum revenue to the railway have to travel on footboards and on roofs of mail and express trains. In the suburban trains the number of passengers actually travelling in a carriage is more than double the capacity specified. This provision will make the railway administration responsible for providing them reasonable accommodation in the trains.
Chapter XIV Clause 135(b)	This clause may be deleted. The one-man Tribunal consisting of Shri N.M. Miabhoy, retired Chief Justice, Gujarat High Court, appointed by the Government of India, Ministry of Railways Resolution No. ERBI.69.001/8 dated 28.1.69 (Railway Labour Tribunal, 1969) recommended gradual abolition of Essentially Intermittent classification. More than 14 years have elapsed since this recommendation was made. It is time this classification is abolished.
Clause 135(c)	This clause may be deleted. The Railway Labour Tribunal, 1969, in para 6.81 of his report, asked the Railway Board to examine the possibility of abolishing "Excluded" classification preferably by combining duties or by bearing this class of workers on split-shift rosters.

...2/-

It is inhuman to expect workers to be on duty all the 24 hours even though their work is of a light nature as, in most cases, they are not in a position to adjust their duty hours in such a way as to provide them adequate rest.

On a recommendation of the Railway Labour Tribunal, 1969, no Grade D worker is at present classified as 'Excluded'.

Clause 137(1) — This clause may be deleted.

Since the essentially intermittent classification has been recommended to be abolished this provision is not required.

Clause 137(2) — The following may be substituted for this clause:-

"A railway servant whose employment is continuous shall not be employed for more than 48 hours a week, provided that if he is required to do preparatory and/or complementary work he shall not be employed for more than 54 hours a week". This is based on the recommendation of Railway Labour Tribunal as implemented by the Ministry of Railways.

Clause 137(3) — This clause may be substituted by the following:-

"A railway servant whose employment is intensive shall not be employed for more than 42 hours a week. Provided that if he is required to do preparatory and/or complementary work he shall not be employed for more than 45 hours a week".

This is based on the recommendation of Railway Labour Tribunal as implemented by the Ministry of Railways.

Clause 137(4) — The existing proviso to this clause may be substituted by the following:-

"Provided that where such exemption results in the increase of hours of employment of a railway servant referred to in any of the sub-sections, he shall be paid overtime at double the ordinary rate of pay for the excess hours of work."

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This is based on the recommendation of the Railway Labour Tribunal, 1969 as implemented by the Railway Board.

Clause 138(1)(a) The following may be substituted for the existing:

"Whose employment is intensive or continuous shall, for every week commencing on Sunday, be granted a rest of not less than 30 consecutive hours."

The existing provision of rest for intensive and continuous workers is 30 hours a week. It will be a retrograde step if the period of rest is curtailed. The Railway Labour Tribunal, 1969 also did not recommend any change in the existing periods of rest.

Chapter XV
Clause 181
182
183

The provisions contained therein are most harsh. They not only bind the railway servant to unlimited duty hours, which is not conducive to safe and efficient working besides being a health hazard but also act as a bar on the judiciary exercising, to a considerable extent, its discretionary powers. It is requested that these harsh provisions may be abandoned in the interest of harmonious work.

Chapter XIII
Clause 122(3)

Please add the following at the end of this clause:

"and to a railway servant, the members of his family and dependent relatives travelling on privilege pass or privilege ticket order."

Memorandum No 16

MARATHWADA JANATA VIKAS PARISHAD

Govindbhai Shroff
President

Tel. No. 4240
S.B.E.Society's Campus,
AURANGABAD.

STATEMENT OF OBJECTS

The Railway Bill, 1986 is being considered by the Select Committee, and is being discussed with the representatives of the main railway users in the context of their needs, expectations and difficulties. Accordingly we wish to place on record the following few lines for consideration.

The Railway Act, 1890 was primarily designed to serve the commercial and military interests of the British Rulers of the Country. With the achievement of Independence there has been a sea-change, in the basic needs of the life of the people, their expectations and aspirations. Besides, efficient, secure and comfortable service to the people, the Railways have quite a high degree of potential of development, particularly for a developing country, as it provides comperatively a quick, cheaper and secure mode of transport of raw material and finished goods, both of Agricultural and Industrial Sectors. The need of such a transport is all the more necessary for the development of Industrially backward areas, wherein every small economy would help them to stand in market competition with their more fortunate brotheren of other regions. Further the farmers of these backward regions would be able to get better prices for their produce and particularly for some of their perishable goods. Accordingly Railways should form essential developmental infrastructure which needs to preceed the Industrial or Agricultural development.

Govindbhai Shroff
President.

MARATHWADA JANATA VIKAS PARISHAD

Govindbhai Shroff
President

Tel.No.4240
S.B.E.Society's Campus
AURANGABAD

Date: 3rd April 1987.

The Secretary,
Jt.Select Committee on the Railway Bill 1986,
Parliament Annexie,
NEW DELHI

The Railway Bill 1986

Dear Sir,

In continuation of our letter dated 29.3.1987 and with reference to the Statement of Objects and Reasons on page 64 of the Railway Bill 1986,we submit that while giving effect to the change and developments that have taken place over the last nine decades,it is necessary to provide in the Bill itself the basic amenities to passengers,the Railway Administration must provide : viz

1. i) Drinking water at all stations
   ii) Catering in trains and at important stations,particu-larly at lunch & dinner timings
   iii) Waiting halls at all stations
   iv) Retiring rooms at important stations
   v) Chairs/Stretchers for medical patients at important stations & in long distance trains.

2. The bill must provide clauses for formation of Advisory Committee from the representatives of all strata users at the Zonal level & for minimum meetings of the Advisory Committees in a year.

3. The Railway Bill 1986 in clauses,27,30,46,58,85,90,110, 120, 134,141,207 & 209 provides for making rules by Central Govt. & Railway Tribunal.In all these clauses we wish to add that after the word notification the following should be added -

   " The Central Government,Railway Tribunal by notification giving wide publicity and considering the objections from the representative bodies & individuals,if any,make rules".

We would request that while finalising the Bill these suggestions may be taken into consideration.If necessary we may be called to discuss personally these suggestions & amendments.

75 Copies of the suggestions & amendments proposed clausewise in respect of the Railway Bill 1986 are enclosed herewith.

Yours sincerely,

Govindbhai

(Govindbhai Shroff)
President
Marathwada Janata Vikas Parishad.

SUGGESTIONS OR AMENDMENT SUGGESTED IN THE RAILWAY BILL

CHAPTER IV

Page No.		As in the Railway Bill	Amendment suggested	Reason
07	14(2) Line 44	entitled to receive the amount, it shall immediately refer the dispute to	entitled to receive the amount, it or the aggrieved party shall immediately refer the dispute to	In case of dispute it should be open to the Railway Administration as also the aggrieved party to refer the dispute to the decision of the District Judge.
10	18(3) Line 12&13	it shall be referred to the Central Government whose decision thereon shall be final.	it shall be immediately referred to the Central Government whose decision thereon shall be in prescribed time (within one year) and shall be final	Our experience is, cases are delayed horribly both at the State level and Central Govt's level. Such matter should be decided quickly.

CHAPTER V

10	20(1) After Line 20	Commissioner that -	a) Priority has been fixed at National level for i) defence ; ii) recognised backward regions and conversion of gauges ; iii) Replacement of rolling stock ; iv) electrification of railway lines.	In keeping with the statement of objects, it is necessary that Central Government has this priority in the Act itself. In view of this 20(1) a, b, c and d should be read as 20(1) b, c, d and e.
10, 11	21 Line 2 on Page 11	section 20, namely - a) opening of additional lines of railway and deviation lines ;	a) opening or conversion of railway lines considered on priority for backward regions or additional lines of railway and deviation lines.	This is necessary as the statement of objects suggest that priority has to be given for providing infrastructure for backward regions and therefore the report of the Commissioner should embody this aspect.

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12	27(1) Line after 20	a) carriage of passengers...	a) carriage of passengers and priorities for opening of railway for the public carriage of passengers in backward regions.	The power to make rules in respect of matters under Chapter V should embody in duties of a railway administration and the Commissioner the priority to be given for backward region as envisaged in the statement of objects.
CHAPTER VI				
12	28(1) Line 30	The Central Government may, from time to time, by general	the Central Government may subject to the appeal to the railway Tribunal by the passengers Association or the aggrieved party.	The experience is that on the eve of annual railway budget or any time during the year the Central Government has been by special order fixing and increasing the rates for carriage of passengers and the passengers have no recourse to any judicial authority for getting established the necessity or propriety of increasing rates since the Tribunal have the powers of a Civil Court under the Code of Civil Procedure- 1908 for the purposes of taking evidence on oath this will give an opportunity to Passengers Association or individual aggrieved to take advantage of this provision. Clause 34 provides for complaint against the railway administration but here the complain would be against the Central Govt. itself.
15	43 Line 32	Where a railway administration considers that since the date of	Where railway administration or <u>aggrieved party</u> considers that since the date of	Both railway administration as also the aggrieved party should be able to approach the Tribunal for revision of the decision given by the Tribunal.
CHAPTER VIII				
16	48(1) After Line 42	<u>Additions required after iv</u>	v) Distance in K.Ms. vi) Ticket No.	It is necessary to have these particulars in the ticket so that the passengers know the distance they are travelling and the ticket number is to be mentioned by Govt.Servant while claiming the T.A/D.A bill

17	48(3) Line 3	a) if it is for the lowest class of carriage, be set forth in Hindi, English and the Regional Language. b) if it is for any other class of carriage, be set forth in Hindi and English	a) if it is for any class of carriage, be set forth in Hindi, English and the Regional language. b) Delete completely.	We do not want to create complex among the passengers.
17	50 Line 20	If a ticket is returned for cancellation, the railway administration	If a ticket, concessional ticket is returned for cancellation the railway administration	This is necessary as the definition of ticket does not include concessional ticket.
17, 18	52 Line 29 53(1) & (2) Line 3 & 6 resp.	Railway servant	Railway Servant not below the Rank of Ticket Collector.	It is necessary to specify the authority instead of mere mention of Railway Servant.
18	54(1) Line 10	A person suffering from such infectious or contagious diseases,	A person suffering from such infectious or contagious diseases, or accompanied by ailing relative who dies while in journey, as may be prescribed, shall not ...	It is necessary to make provision for persons accompanied by the relatives suddenly dying while in journey.
18	54(2) Line 15	Shall arrange for the separation of the person suffering from such disease,	Shall arrange for the separation of the person suffering from such disease, or the person accompanied by the ailing person who dies while in journey ...	
18	55 After Line 24	Served by the railway...	Add: Railway Administration shall ensure that not more than the maximum number of passengers permitted, are allowed to be carried in a compartment.	While agreeing that the number of passengers wanting to travel is abnormally increasing day by day, month by month and year by year, it is considered that human-beings cannot be treated as chattles and should have the minimum comfort. At present it is hell on earth to travel in unreserved compartment,

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				particularly in the peak periods and peak seasons.
19	58(2)(f) Line 8	may carry passengers suffering from infectious or contagious diseases and the manner in which	may carry passengers suffering from infectious or contagious diseases or passengers dying while on journey.	A passenger may be accompanied by relative, who may suddenly die while in journey
CHAPTER IX				
19	59 Line 25	for the reference of any person during all reasonable hours without payment of any fee.	for the reference of any person during all reasonable hours to be notified by Railway Administration without payment of fee.	There should be a specific period of the day notified instead of mentioning reasonable hours.
19	61(2) Line 40	is opted, the goods shall be deemed to have been entrusted at owner's risk rate.	is opted, the goods shall be deemed to have been entrusted at Railway's risk rate.	Since the railways will be carrying the goods the rate should be of railway Administration when no option is exercised.
20	63(2) Line 12, 13,14,15 & 16	A Railway Administration ..... in this behalf.	To be deleted those five lines and replace as follows :-	
			A railway servant authorised in this behalf shall record a certificate for correct weight,description or classification of goods or the number of packages mentioned in the railway receipt.	It is necessary that such a certificate is recorded to ensure the proper loading of the goods entrusted by a person.
20	64(2) Line 28 onwards	to the railway administration to refuse to accept such goods	to the railway administration to refuse to carry such goods. (Rest of the portion to be deleted)	Passenger must give statement as required. The alternative is refuse to carry.
20	64(3) Line 34	open to the railway Administration to charge in respect of the carriage of the goods the highest rate for any class of goods.	open to the Railway Administration to refuse to accept the goods. (Rest of the portion to be deleted)	

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20	64(5) Line 44	under sub-section (1), the railway servant may detain and examine the goods.	under sub-section (1), the railway servant may examine goods (detain to be deleted)	The word detain is vague in relation to period and may cause inconvenience to the owner or person because of the detention
22	69(2) Line 17	but may, by a like order, be renewed from time to time such period not exceeding one year at a time as may be specified in the order.	but may with the approval of Parliament be renewed from time to time (Rest to be deleted)	The representatives of the people must know why the Central Govt. has issued the order in public interest.
24	77(1) Line 4	A railway administration may, on a request made by the	A railway administration shall, on a request made by the	This should not be left to the discretion of the railway administration.
24	80(2) Line 34	as may be prescribed	Addition is required as follows :-	
			In such cases claim should be settled in prescribed time.	Necessary to give finality to the matter.
24	81(2)(b)Line 46	not perishable in nature	not perishable in nature in 15 days	Sell or public auction of the consignment should not be the next day and the consignor or consignee should be given reasonable time to collect on payment of freight.
25	82(1) Line 16	If any person fails to take delivery of -	if any person fails after proper notice to take delivery of -	The person must have notice so that he may take delivery.
26	66(4) Line 35	allow any person to refer to it free of charge at all reasonable hours.	allow any person to refer to it free of charge at all reasonable hours duly notified.	People must know the reasonable hours of the Railway Administration.
CHAPTER XI				
34	101(c)(ii)Line 1	riot, civil commotion, strike, lock-out, stoppage or restraint of labour from [illegible] arising	riot, civil commotion, strike (Remaining portion to be deleted)	The consignee entrusting to railway valuable packages cannot be put to loss due to lock-out, stoppage of work

				or restraint of labour. The railways should not be exonerated from liability in these cases.
36	109(1) Line 10	enemies, fire, accidents from machinery, boilers and steam, and	enemies (Delete the rest of the words)	The contractual liability includes accident due to fire, accident from machinery and boilers and steam etc. and the railways shall have to accept the liability in such cases.
CHAPTER XII				
36	111(1)(e)	Govt. may notify in this behalf in the Official Gazette.	Government may notify after giving wide publicity and considering the objections if any from the passengers association or individuals.	Central Govt. official gazette is not read by everybody and it is necessary that this is given publicity through the newspapers all over India so that the passengers association or/and individuals may give their objections, if any.
37	111(2) Line 14	In the accident belongs, shall without unnecessary delay, give notice of	In the accident belongs, shall without delay, give notice of	It is necessary that the railway administration gives notice without delay to the State Government and the Commissioner concerned without delay.
37	112(2) Line 28 to 30	If for any reason ..... administration accordingly.	To be deleted	It is necessary that an independent authority should hold the enquiry and the concerned Commissioner in such cases is the proper authority.
CHAPTER XIII				
39	122(2) Line 38	Shall in no case exceed one lakh rupees in respect of any one person.	shall in no case exceed 10 lakhs rupees in respect of any one person.	The railway bill is more dealing with administrative, commercial or stringent penalties to passengers. Maximum Rs.1 lakh in case of death of passenger is meagre amount. The earning capacity of the persons defers and it is necessary that the maximum limit upto 10 lakhs is prescribed instead of one lakh.

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40	124(2) Line 9	entertained unless it is made within three months of the	entertained unless it is made within six months of the	For a relative of a passenger dying must have reasonable time for putting application after coming out of the terrible shock of the death of nearest relative.
40	125(2) Line 23	Where, on the receipt of an application	Within one month of the receipt of an application..	It must be made mandatory for the railway administration to deal with such applications within reasonable period.
41	129 Line 33	direct that the person injured be examined by some duly qualified	direct that the person injured be examined within two days of the accident.	Unless the examination is done immediately in respect of a injured passenger or person, the injury may get recovered and the claim may have to be reduced.
42	131(1) Line 2	Compensation forthwith by depositing the amount of the compensation with	compensation within seven days of the receipt of the order by depositing the amount of the compensation.	This is proposed to avoid delay.
42	131(3) Line 10	under this section shall with the least possible delay, be paid to the	under this section shall, within a week after deposit, be paid to the	The definite time limit is proposed so that the person aggrieved may get amount of compensation in shortest possible time.
42	132(1) Line 15	Jurisdiction in the place where the accident occured	jurisdiction in the place where the accident occured or in the place of the person's residence	The person aggrieved is not expected to go to the High Court for appeal when the accident takes place in the jurisdiction of the High Court which may be thousands of kilometers away from the place of his residence.
42	132(1) Line 18	in section 122	in section 122, i.e. upto Ten lakhs	Instead of one lakh the compensation proposed in clause 122 is 10 lakhs.

.... 8/-

42	133(1) Line 30&31	other law for the time being in force but no person shall be entitled to claim compensation more than once in respect of the same accident.	other law for the time being in force (Remaining portion to be deleted)	If the law permits compensation under different Acts there should be no bar for claiming the same. As the compensation of maximum 10 lakhs may not be in proportion to the status, earning capacity of the person aggrieved.
42	134(2)(c)Line 44	the nature of the injuries for which compensation shall be	Schedule for nature of injuries for which compensation shall be	The injuries may be of different nature involving loss of finger to complete disablement and therefore the compensation may have to be in proportion to the loss.
46	142(3) Line 21	twenty rupees, whichever is more	ten rupees, whichever is more.	Excess charge of ₹.20/- is comparatively high amount if a person travels just about 5 to 10 kms. by train.
47	143(3) Line 7&8	or twenty rupees,whichever is more	or ten rupees, whichever is more.	₹.20/- is heavy as excess charge in case of travel of 15 to 20 kms.
47	143(4) Line 23	which may extend to one month but not less than ten days	which may extend to one month (Remaining portion to be deleted)	Travelling free and without proper ticket is an order of the day and it is high time such travelling is discouraged by deterent punishment.
48	146 (b) Line 15	imprisonment for three months in case of conviction for the	imprisonment for six months in case of conviction for the	Interfering with means of communication in trains is an order of the day. It is high time, this is discouraged by deterent punishment at least for the second and subsequent offences.
49	150 (b) Line32&33	commits any nuisance or act of indecency or uses abusive or obscene language, or	Nuisance, act of indecency or abusive or obscene language should be defined in the Act itself.	As there is no definition in the Bill 1986, therefore it will be difficult to make these actionable.

51	156(2) 29&30 Line	may, by notification, specify	may be notification and wide publicity and after considering the objections if any from the passenger association or individual	People should know any additional item added in the railway property.
52	162 Line 29&30	If any passenger or any other person, after being warned by a railway servant to desist, persists in travelling on the roof	If any passenger or any other person travels on the roof	It is not necessary that people should be warned of the danger in travelling on the roof, step or footboard of any carriage or on engine.
53	165 Line 14&15	which may extend to one month or with fine which may extend to one hundred rupees, or with both.	which may extend to six months and fine of one thousand rupees.	In case of disobedience of railway servants heavy punishment is called for.
53	167(4) Line 40	one hundred rupees	five hundred rupees	Cattle cannot be purchased for hundred rupees.
54	169 (b) Line18&19	occupies any such berth or seat having been required by any railway servant to vacate it	occupies any such berth or seat (Remaining portion to be deleted)	Mere occupation of berth or seat in lady's compartment by male passenger should be considered as an offence.
54	169 (b) Line 21	punishable with fine which may extend to two hundred rupees and may	punishable with fine which may extend to five hundred rupees and may	Entering carriage or other place reserved for females should not be treated as an ordinary offence.
55	176(3) Line 27	which may extend to fifty rupees	which may extend to hundred rupees	Father or guardian should be dealt with seriously in such cases for the offence committed by ward.
56	180 Line 2	he shall be punishable with fine which may extend to fifty rupees and	he shall be punishable with fine which may extend to thousand rupees and	Railway servant drinking while on duty should be treated very seriously.
56	180 Line 6	extend to one year or with fine or with both	be at least one year and with fine of thousand rupees.	

.... 10/-

56	181 Line 13&14	a term which may extend to two years and with fine which may extend to five hundred rupees	a term of at least two years and a fine of thousand rupees	The railway servant should be treated very strictly in such matters.
56	182 (b)Line28&29	he shall be punishable with imprisonment for a term which may extend to two years and with fine which may extend to two thousand rupees.	he shall be punishable with imprisonment for a term of at least two years and with fine which may extend to two thousand rupees.	The railway servant should be treated very seriously while on duty.
57	184 (b) Line 9	he shall be punishable with fine which may extend to one hundred rupees	he shall be punishable with fine of not less than one thousand rupees.	- do -
57	185 Line 13&14	be true, he shall be punishable with imprisonment which may extend to one year or with fine which may extend to five hundred rupees, or with both.	be true, he shall be punishable with imprisonment of not less than one year and fine of rupees thousand.	- do -
57	187 Line 26&27	he shall be punishable with fine which may extend to one hundred rupees.	he shall be punishable with fine of at least of five hundred rupees.	- do -
57	188 Line 30&31	section 120, he shall be punishable with fine which may extend to fifty rupees.	section 120, he shall be punishable with fine of not less than one thousand rupees.	- do -
57	189 Line 35	warrant or other written authority by any railway servant or police	warrant or other written authority by any authorised railway servant or police.	The person arresting anybody should have proper authority.

Aurangabad
4.4.1987.

G.R.Rege
Marathwada Janata Vikas Parishad
Aurangabad.

Memorandum No. 17

Joint Committee on the
Railways Bill, 1985

Federation of Indian Chambers of Commerce & Industry

Memorandum to the Joint Select Committee of the Parliament on Railway Bill, 1986

The Railway Bill 1986 seeks to "consolidate and amend the law relating to the Railways by a new act" in response to "the needs of the present day" and "give effect to the changes in the railway system". These objectives are, no doubt, realistic and well directed. The various provisions of the Bill also meet these objectives in a large measure as far as the interests of the Railways are concerened. However, in terms of protecting the interests of the Rail users, the Bill has very little to offer.

The Railways provide an essential infrastructure service. In doing this, they enjoy the advantages of monopoly. They cater to a large multitude of railusers who are scattered all over the country and weild little collective strength. The Bill must, therefore, ensure that the Railways as operators of an important infrastructure are bounden to provide efficient and economic service to its users. Many of the provisions in the current Bill give undue protection to the Railways at the cost of its consumers. The specific provisions which limit the monetary liability of railway administration in respect of payment of compensation for loss, damage etc of goods is a case in point.

FICCI's comments on the various provisions of the Bill are given below in the order they appear in the Bill :

Chapter 1 : Preliminary

Clause 2, Subclause 20 states that transit in relation to the carriage of goods by Railways commences as soon as the railway receipt is issued or the consignment is loaded, whichever is earlier. Thus, the Bill only delays the responsibility of the Railways. Transit should be defined to commence once the Railways accept the goods for movement.

Clause 2, Subclause 31 specifies that "Railway Administration" in relation to Government Railways means the General Manager of Railways. As the Bill clearly provides for functions to be exercised by the Central Government and the Zonal Railways separately, it would be in order to define the locus standi of th Railway Board and its organisational links with the Zonal Railways.

Chapter 2 : Railway Administration

Clauses 3 and 4 confer powers on Central Government to set up Government Railways and appoint General Managers of the Zonal Railways. Here again, there is no mention of the linkage between Zonal Railways and the Railway Board.

Chapter 3 : Commissioner of Railway Safety

Clause 6 confines the functions of the Commissioner of Railway Safety to inspections of Railways, conducting inquiry into accidents and discharging of such other duties

as are conferred on him by or under this Act and reporting to the Central Government. To make the functioning of the Commissioner effective, the Bill should specifically provide for regular monitoring of the implementation, not only the safety regulations but also the recommendations that he makes after inspection or enquiry.

Chapter 4 : Construction and Maintenance of Works

Clause 14 stipulates that no suit shall lie against a Railway Administration to recover any amount for any damage or loss caused in the course of construction and maintenance of works. However, the Sub-clause 2 under Clause 14 mentions that a Railway Administration shall pay compensation for any loss or damage caused and in case of a dispute as to the insufficiency of the amount or dispute over the recipients, it shall be referred to the decision of the District Judge of the District, whose decision shall be final. While it is necessary to limit the scope for litigation on the above provisions, no-one should be debarred from claiming compensation for damage or loss.

Chapter 6 : Fixation of Rates

Clause 28 empowers the Central Government to fix rates for carriage of passengers and goods as also of other incidental charges and Clause 29 vests with the Central Government powers to classify or re-classify commodities for the purpose of determining the rates and also increase

or reduce the class rates and other charges. Clause 30 authorises the Railway Administration to deal with station-to-station rate and lumpsum rate.

As against these provisions, the existing Act provides for fixation of maximum and minimum rates by the Central Government. In actual practice, the "Railway Board" which remains as an undefined entity, exercises the powers. Under the new Bill also, the position might remain unaltered. The Bill should clearly specify who in Central Government would fix rates and what will be the procedure for review of rates in case there is a dispute. Similar provisions should also be incorporated in respect of classification of goods.

Chapter 7 : Railway Rates Tribunal

The purview of the Tribunal has been limited by Clause 34 to a review of any undue preference in traffic, disparity in station to station rate and any other unreasonable charge levied by the Railways. Clause 35 specifically exempts classification or re-classification of commodities, wharfage and demurrage and fares levied for carriage of passengers and freight levied for the carriage of luggage, parcels, railway material, military traffic and lumpsum rates.

The Railway Rates Tribunal will in effect become a station to station Rate Tribunal. Towards giving a fair deal to the rail users, the Railways Rates Tribunal should be given powers to review all disputes arising out of rates and classification of goods.

Clause 42, Sub-clause 1 and 2 further provide that even in case of disputes, the Tribunal may fix such rate or charge as it considers reasonable from any date as it may deem proper, not being a date earlier to the date of the filing of complaint. A complaint is filed only after the dispute arises. Delay in filing the complaint is inevitable as the complaint has to be supported by the data. The Tribunal's jurisdiction should be extended to cover at least a period of one year prior to the date of filing the complaint.

Chapter VIII : Carriage of Passengers

Sub-clause 2 of Clause 49 provides that if no accommodation is available in the class of carriage for which a ticket is issued, and the holder travels in a carriage of a lower class, the person shall be ebtitled to a refund of the difference. The holder of a confirmed ticket should be entitled to full refund if no accommodation is made available in the concerned class of carriage. The information given on the Reservation Charts should be taken as the proof of availability or non-availability of accommodation.

Clause 50 prescribes that the "railway administration" shall refund such amounts as may be prescribed in case a ticket is returned for cancellation. The existing cancellation rules are harsh on the rail users. The Bill should clearly specify the criteria for making such

cancellation rules. It should also be provided that the Railways will not cancel on their own any confirmed ticket except as per Clause 54.

Chapter IX: Carriage of Goods

Clause 59 deals with maintenance of records and refe ence books at stations. So far, the responsibility for this rested with the Station Master which is now being shifted to the Railway Administration. Railway users will be better served by continuing with the same practice.

Clause 60 empowers the Railway Administration to impose additional conditions with respect to carriage of goods. There is no provision for this in the existing Act. While this new clause stipulates that these conditions imposed would not be inconsistent with the Act or rules made thereunder, the Bill does not provide for review and rectification in case of dispute. The Bill should include deterrent provisions to prevent Railways from imposing conditions that are not in line with the Act and Rules.

Clause 61-clause 2 states that any goods for which owner's risk rate and railway risk rate are in force, shall be deemed to have been entrusted at owner's risk if no rate is opted. Owner's risk rate should be applicable only where it is opted for. The rail user is aware of the risks only when he deliberately opts for it.

Clause 63 gives legal recommendation to railway receipt. But, at the same time, Sub-clause 2 absolves the Railway Administration of the responsibility of issuing clean R/Rs incorporating the correct information on weight, description/classification, number of packages etc. The Railway Administration is responsible only when a certificate as to the correctness of the information on the RR is recorded on the RR by a Railway servant authorised in this behalf. This vitiates the very purpose of making RR's a legal document . The Railways should issue a clear RR and use of phrases such as "said to contain" on RRs should be banned. This may be waived only by mutual consent of the rail users. Otherwise, the Railways might use this section to reject claims for compensation.

Clause 67 states that no breach shall be deemed to have been committed only for the reason of the deviation of the route. This flexibility must be subject to justification to be given by the Railway Administration which may be reviewed at the appropriate level. The rail user must always be charged freight only for the shortest possible route of carriage.

Clause 70 deals with the maximum carrying capacity of the wagons. This provision lacks substance without adequate weighment facilities. In the absence of weighbridges, wagons are often underloaded. This results in the loss of the carrying capacity of the Railways to the

economy. The consumer ends up paying freight in excess of the weight actually moved. The Railways must be made responsible for weighment at loading points. If, in case, overloading is noticed, the excess should be removed. This is the only way Railway Safety can be ensured.

Clause 71 authorises the Railway Administration to levy penal freight charges on the consignor, the consignee or the endorsee, as the case may be. In many cases, the consignee has no role to play in the loading wagons. The Bill should specifically provide that penal freight will be levied on the consignor where the consignee has no role to play in the actual loading and weighment at the originating point.

Clause 77, Sub-clause 2 is unfair to the customers in that it requires that the customer whose request for reweighment is allowed must also pay demurrage charges. This is unreasonable as such detention occurs in the process of obtaining permission to reweigh and then in actually undertaking reweighment. Moreover, where no reweighment is done at the forwarding stage, it becomes essential to carry out weighment at the destination. The facility of reweighment at the destination must be made available to all customers, on request.

Clause 78 absolves the Railways of any responsibility for wrong delivery of goods against forged or defective R R s. This amounts to defending irresponsible employees for actions which could be prevented with reasonable diligence. Moreso, as copies of R R are always available with the employees well in advance such protection can also lead to corruption at the cost of the customer.

Clause 79 provides for open delivery of damaged consignments. It should be further provided in this Section that the term "open delivery" would include necessary assessment of the loss. No wharfage should be charged for the delay due to the process of arranging open delivery.

Clause 81 empowers the Railways to recover unpaid freight and other dues by holding a lien on subsequent consignments. This should be subject to the condition that a demand notice for payment of the earlier dues has been issued to the party concerned before the lien is exercised on subsequently received goods.

Consignments held on lien must be exempted from payment of demurrage or wharfage. Otherwise disputes may arise between the consignees and the Railways or the powers may be exercised to harass customers. Where goods are to be auctioned, notice must be given to the party concerned well in advance. A minimum period for this notice should be prescribed.

Clause 82 deals with disposal of unclaimed consignment. However, it is not incumbent on the Railways to give sufficient notice of the arrival of goods or to stricIty adhere to normal transit time. Under such circumstances, unless the consignee is constantly in touch with the Railway Administration to get information regarding arrival of goods, he stands the risk of losing them. The period for removal of goods which was earlier a fortnight has now been reduced to a week. This should be restored to 15 days.

Clause 83 outlines how perishable consignments should be disposed when a train cannot proceed further. The use of the term "any other cause" to justify the disposal of perishable goods where the train is unable to proceed further due to negligence on the part of the Railways is far too sweeping.

Chapter X: Special Provisions As To Goods Booked To Notified Stations

Sub-clause 2 of Clause 87 while prescribing that Railway Administration shall, as soon as the goods arrive, send intimation to the consignee by registered post, subject to payment of postage charges. However, Sub-clause 3 adds that if goods are not removed within seven days from the termination of the transit, they are liable to be sold by public auction. The time limit for

removal of goods should be counted ffom the date of sending the information by registered post. Keeping in view the likely postal delays, the time limit should be retained at 15 days.

Clause 92 absolves the railways of any responsibility for loss or damage etc after the wagon has been placed at the point of interchange, both in respect of loading and unloading at a siding not belonging to the Railway Administration. The provision is unfair. It is only when the wagon is open, that is, at the point of unloading that whether the contents are complete and in good order can be assessed. The provision, therefore, needs to be reviewed and modified suitably.

Clause 93 : As per this section, the Railways will not have any liability in case of goods carried in open wagons or in defectively covered wagons at the request of the consignor. Usually a consignor would resort to such means only when proper wagons are not available. The Railways should at least share the liability with the consignor as is done in case of FCI's consignments. This is essential as no person would opt for defective wagons under normal circumstances.

Clause 94 states that the Railways will bear no liability for loss, damage etc caused by delays beyond its control excepting negligence or misconduct on the part of Railway personnel. It is not clarified whether these provisions apply only to bookings at owner's risk rate. The phrase 'reasons beyond control' is too vague and could be used to justify all sorts of detention.

Clause 96 pertains to bookings at owner's risk rate. It makes the Railways liable for loss or damage caused due to the negligence or misconduct of the Railways or its servants. However, the claimant is not in a position to discover such negligence or misconduct. Therefore, the onus to prove that no negligence or misconduct occured should be on the Railways.

Clause 104 and 105 define compensation and refund. While in the earlier Act, a letter addressed to the Railways constituted a claim, under the new Section, reference is made to the word 'notice'. Under Section 105, it is only after such a notice has been sent under the previous Section that a suit can be filed on the Railways. Given the past record of rejection of claims by the Claim Officers on petty grounds, this change is likely to be used by these Officers to reject applications for compensation. Further, whereas the refund could be collected under the previous Act either

from the forwarding or the destination Railway or the Railway in which the loss occured, under the new provision, refund can only be sought from the Railways on whom the notice under clause 104 was served.

Clause 106 : Under this clause, once the Railway Administration paid the compensation to the cosignee or endorsee, no suit shall lie against it, on the ground that the consignee or endorsee is not legally entitled. This would lead to legal complications. The Railways should ensure that the compensation is paid to the right person/ party.

Clause 196 : Under this clause, jurisdiction of civil courts is barred for proceedings in respect of any action or ommission of the Central Government or the Railway Administration except as permitted by the new Act. There is, thus, no legal redress left for users. Recourse to legal redress should be made available to the users, as many of the provisions in the Bill are grossly in favour of the Railways.

Chapter XV : Penalties and Offences

This Chapter defines various offences and specifies punishment. However, there is no clear definition of the offences committed by the railway servants indulging in or abetting pilferage of goods or wilfully denying the rail users of their legitimate claims.

Chapter XVI : Miscellaneous

Clause 207 vests with the Central Government, sweeping powers to exempt any railway from any or all of the provisions of this Act. No time limit has also been fixed for such exemption. Thus, there will be no need for coming before the Parliament for making amendments.

Ommissions from the existing Act

In the new Bill, a number of provisions which were of importance have been ommitted.

Old Clause 27: This clause casts responsibility on the railways to offer traffic handling facilities. Given the deplorable conditions of goods sheds, it is essential to retain legal provisions in this regard.

Old Clause 61 provides that the Railway Administration shall on a request in writing furnish to the rail user details of the charges levied under different heads. In the absence of this clause, no documentary proof will remain with the party as a proof of payment made to the railways, particularly as the receipt has to be surrendered to take delivery of goods. This clause, therefore, needs to be retained.

Old Clause 76(F) : Under this clause, where goods were carried at owner's risk, railways were required to disclose to the sender the manner in which the consignment was dealt with while in their possession. The sender or consignee had no other means to prove the railways' negligence or misconduct. With the omission of this clause, the railways will have no obligation to provide such details. Since the new Bill contains provisions whic made the railways liable only if failure is proved, it is necessary to continue old clause 76(F) as well.

Additional Suggestions

The National and Zonal Railway Users' Consultative Councils play a vital role in making the railway administration responsive to the needs of its users. Towards making it a more effective forum, the Railway Bill should clearly provide for the constitution of such councils. It should also set the criteria for its composition giving representation to different sections of railway users. The functions of the Council must also be defined on the lines of the Central Advisory Council of Industry included in Industries Development and Regulation Act.

Memorandum No. 18

ALL INDIA LOCO RUNNING STAFF ASSOCIATION

REGD. NO. 17903

(AFFILIATED TO AIRF)

H/Q-Anara
Dated 29.3.87

K. RAJANNA
President

S.K. DHAR
Secretary General.

To

Shri R.S. Mani,
Senior Legislative Committee Officer,
Parliament House Annexe,
New Delhi-110001.

Subject: Comments and Suggestion on the Railway Bill, 1986.

On behalf of this Association, we expressed gratitude for having extending this Association the scope of representation before the Joint Committee of both houses of the Parliament on this bill introduced in the last year. We also expressed our willingness to give the oral evidence before the Committee because in any of the clauses of this Bill having much relations with our working and serving conditions. Naturally, we desire elaborate discussions and practical demonstration on this bill before passing it as an act.

However, within the limited reasources we are submitting our comments and suggestions because for making out a proper comments and suggestions, the Railway Act, 1890 book is required which has not been supplied to us. Naturally a preliminary comments and suggestions on this bill formulated are enumerated below the 75 copies in English sending herewith. For want of sufficient time, the Hindi translation could not be ensured and copies could not be sent.

.....2/-

However, after receiving the Railway Act, 1890 book, when the explanatory note of our comment and suggestion will be prepared, further copies alongwith Hindi copies will be sent. So you are requested to kindly send us a Railway Act, 1890 book to enable us to make our proper representation on this bill.

With regards

Yours Sincrely

Sd/-
(S.K. DHAR)
Secretary General.

The following are the suggested Amendments to the Railway Bill, 1986 by the All India Loco Running Staff Association.

1. Section 111 Subsection 2. Substitute the words "Government and the commissioner having jurisdiction over the place of accident" appearing in line nos 15 & 16 of page 37 by the following- "Government the Commissioner on Railway safety having jurisdiction over the place of accident and the Railway Safety Counsellor, elected by the railwaymen (defined as workmen under Workmen's Compensation Act) of the Division or the workshop in which the accident has occured through secret ballot for a term of three years.

Provided that such of the persons who are not railway servants or members of the Executive Committee of a Registered Trade Union of railway workers and are ineligible for getting elected under the Peoples Representation Act, shall not have the right to seek elections.

Provided further that the safety Counsellor shall have the right of an associate with equal status in any enquiry conducted by the commissioner and shall have access to all records, materials etc. concerning the accident."

2. Section 112 sub section (1) add the following after the words 'administration' in line 21 page 37 including the "Safety Counsellor".

3. Section 112 Sub section 2: Add the following after the word "accordingly" appearing in line No. 30 (Page 37) and authorise the "Safety Counsellor" to hold the enquiry jointly with an officer deputed by the railway authorities on this behalf under Section 113."

4. Section 114 section (1) - Add the following words after the word "Commissioner" appearing in line No. 38 (Page 37) : "and in his absence the Safety Counsellor".

5. Section 114 Sub section (2)- Add the following words after the word "Commissioner" appearing in line no 49 (Page 37): "and the Safety Counsellor".

6. Section 122 sub section (2)-Add after the words "of any one Person' appearing in line 43 (page 39) the following: "Provided that the railway administration shall be required to provide employment in the railway to one of the family members or dependents in order of succession suitable to his/her status and qualification to ensure an adequate livilihood for the the family members and the dependents if it is so desired by them."

7. Section 135 sub section (a)-Delete the words "except when it is excluded or has been declared to be essentially intermittent" appearing in line no 12 & 13 Page 43.

8. Section 135 : Delete sub section (b) & (c).

9. Section 135 sub section (d) Substitute the words "continued concentration" appearing in line nos 37 and 38 page 43 with the following :

"Sustained attention" and also add at the end of this clause "provided that any claim by the railway workers of any areas or station or category for being

.....4/-

declared an 'intensive shall be examined by the prescribed authority and shall be turned down only when it is established not to be of an intensive character in a work study of job analysis, conducted in co-operation with a Workers Supervisor elected subject to section 140."

10. Section 137-Delete sub section (1) and renumber the following sub sections 2, 3 and 4 as sub section 1, 2 & 3.

11. Section 137 original sub section (2) renumbered (1) should be substituted by the following: "A railway servant whose employment is continuous shall be required to perform 8 hours duty in a day with half an hour break for meals every day between 4th and 5th hour of duty or 40 hours in a week which may be extended by not more than 2 hours on any single day or six hours in a week on an average in a fortnight on payment of overtime allowance at double the normal emoluments while for the running staff one stretch of duty should be treated as one single day".

12. Section 137 original sub section (3) renumbered sub section (2) should be substituted by the following: "A railway servant whose employment is intensive shall be required to perform six hours duty a day without any break and thirty hours a week which may be extended by not more than one hour on any single day and three hours in a week on an average within afortnight on payment of overtime allowance at double the normal emoluments while for the running staff one stretch of duty should be treated as one single day.

13. Section 137, original sub-section (4) renumbered (3) should be substituted by the following :

"(3) Subject to such rules as may be prescribed temporary exemption of railway servants from the provisions of sub sections (1) and (2) may be made by the prescribed authority in consulation with the workers' Supervisor of the area if it is agreed that such exemptions are necessary in order to serve the people against natural calamity and/or accident and/or to defend the country during war against enemy attacks:

....5/-

Provided that there such exemptions result in the increase in hours of employment referred to in any of the subsections 1 and 2 mentioned above, he shall be paid overtime allowance at double the normal rate of emoluments for the same.

Provided further that a railway servant claiming relief in case of sudden deterioration of health conditions or after completion of his hours of duty may be given relief which must be made available within two hours from the time such relief was asked for.

14. Section 138 sub section (1) clause (a) to be made as subsection (1) and clauses (b) and (c) to be deleted.

/Section 136 15. / do substitute the sub section (2) with the following:

"Any locomotive or traffic running staff must have a rest of 16 hours at Head Qrs and 8 hours at outstation betwee two spells of duty and shall be granted, each month a rest of at least four periods of forty eight consecutive hours each on five periods of forty consecutive hours each including two full nights in each periods.

16. Section 138 sub section (3) be substituted with the following :

"Subject to such rules as may be made in this behalf, the prescribed authority in consulation with the workers Superivisor may, if it is mutually agreed, exempt any railway servant from the provisions of subsection (1)&(2).

Provided that a railway servant so exempted shall in such circumstances as may be prescribed, be granted compensatory periods of rest for periods he has foregone.

Provided furtner that in case compensatory periods of rest could not be granted in a month, the railway authorities shall pay the concerned railway servant overtime allowance equal to tripple the normal emplument."

17. Section 139, Add the following at the end, "subject to the condition that it shall not go beyond the limits of physical endurance and/or prejudice the life of the railway servant concerned."

18. Section 140: Add the following sub section (3) and renumber the existing sub section (3) as sub section (4):

.....6/-

(3) ~~A~~ The Railway administration shall appoint one Worker Supervisor from each division and from each workshop, on the basis of election through secret ballot by all railway servants (workmen as defined under the Workmens Compensation Act) in the division or workshop for a term of three years.

Provided that such of the Persons who are not railway servants or members of executive committee of a registered trade union of railway workers of that area and are ineligible for getting elected under the Peoples Representation Acts shall not have the right to seek election.

Provided further that the Workers Supervisor shall have the right of an associate with equal status of the Supervisor of Railway Labour and shall have assess to all complaints regarding excessive work and violation of the provisions in this chapter.

19. Section 140 : Original sub section (3) renumbered (4) Add the following words after the word "labour" appearing in line no.14 page 45 "or a Workers' Supervisor."

20. Section 141 Sub section (2) delete all those words and figures which are inconsistent with the amendments in this chapter suggested above, and incorporate the words "workers' supervisor" appropriately.

21. Section 144 Add the following words and figures "142 and " after the word "Section" appearing in line no. 27 page 47.

22. Section 144 Add after the words "behalf" appearing in line no. 28 page 47 the following:

"But not below the rank of a Station Master or the Train Guard or the Batch in charge of ticket checking inspectors or conductors".

23. Section 150 clause (b) to the proviso of this section be continued as a full sentence of the proviso deleting clause (a).

24. Section 191 : Add the following at the end.

.....7/-

"Provided that all railway servants allegedly committing violation of this chapter of the Act (Chapter XV) as part of trade dispute, shall not be arrested or tried under this Act but tried under the Industrial Disputes Act, except when involved in an accident causing death."

Section 180 - Add the following at the end

"Provided that rules for medical examination for determination of the alcohol consumed and the state of intoxication shall be framed which must include the right of the railway servant to ask for the presence of a Doctor of his choice or the Safety Counsellor or both at the time of his medical examination but exclude derogatory steps like sniffing by trained dogs etc."

Section 181-i Add the words "subject to the rules in chapter XIV of this Act" after the word shall in line no 12 page 56

ii) Add the following after the main provision of this section but before the existing proviso as the first proviso.

"Provided that this section shall not apply if the authorities have not provided relief within two hours of asking and/or the situation has gone beyond the limits of physical endurance of any normal person or his physical condition had so deteriorated that he had to be shifted immediately for medical care to save his life or limb."

and (iii) Add the word "Further" after the word "Provided" appearing in line no.: 15 page 56.

18A

ALL INDIA LOCO RUNNING STAFF ASSOCIATION
(Regd.No.17903)

Yellow Building,P.O.Anara R.S.Dist.Purulia(W.B.)

President:
K.Rajana
Secretary General
S.K.Dhar.

Camp Office:
House No.3656
Gali Ram Nath Patwa
Paharganj, New Delhi-55

To

The Chairman,
Joint Select Committee,
Parliamentary Committee of Both the Houses
On Railway act Amendment Bill/86.

Through the Senior Legislative
Committee officer,
Parliament House Annexe,
New Delhi-110001

Dear Sir,

Sub: Supplementary evidences pertaining to the clauses of Railway Act 1890 Amendment Bill/1986.

Ref: Detailed note as desired at the time of the oral evidence of All India Loco Running Staff Association on 11th Setp.1987 at Calcutta Eastern Railway Head Quarter office.

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1. In addition to our comments on the bill submitted on 29.3.1987, what we explained during our oral evidence before the committee on 11.9.1987, we were further being asked to submit a detailed note on the subject matter, to enable the Honourable members of the Committee to understand entire crux of the problems raised by our Association on the clauses of the same Amendmanent bill which are mostly related to the working and serving conditions of the Railwaymen in general and the Loco Running Staff in particular and connected with the safe running of the train services and running of Railways as accident free.

2. This Association wants to re-iterate here that the bill proposes many retrograde provisions pertaining to more powers to the authorities to shield the calousness of the Railway administration by shiefting them on to the Railwaymen and to punish them and also to malign them for happening any untoward incidence before the mass of the people because of the Railway Industry in real sense is the public utility service which in fact denied by the Railway Ministry in order to deprive both Railwaymen from their Legitimate right and demands as industrial workers and the travelling public from their legitimate rights and privileges of amenities, accommodation etc. should have been granted under the system of public utility service, whereas every year Railway Budget enhancing the fare and freight for the Railway users. On one side, the Railway is not recognised as Industry though accepted by our Government, on the other, gradually the concept of Public utility service have been done away with and the decision have been taken to run the Railway as a commercial service, to extend maximum benefit to the one

p.2

particular small section of the people. And in order to ensure that no opposition to such policy of running the Railways is voiced, the entire systems have been oriented on that line and forcibly started implementation, Now for the benefit of regularisation of the same, the ammendment to the Railway Act have been designed in such a way in order to see that those are regularised through the legislation of the Act.

This Association very much affraid and express concern that after the enactment of such Amendment of the Railway Act, the rest-safety rules will also be given good bye and complete control will be lost in safe running of the Railways and disastrous accidents will be happened every now and then.

3. In the present state of computarised, Mechanised and Technological updating of Railway System, when more speedy and lengthy trains are running, due to more horse power of the Engines, hauling capacity increased by many fold. The Railway Ministry, declared to run 9500 tones bearing trains. When more powerful, and absolute safe working conditions are required to be introduced in running of the Railway systems, at that time slackening of the Safty working conditions replacing by unsafe different methods not only will increase the distress for the workers but will cause loss to the human lives and the loss to the national property and exchequer.

4. In case of any accident without keeping an impartial scope of enquiry into the cases of accidents for detecting the real guilty persons involved the cases of accidents, the Railway used to come out with a Statement blaming any Railwaymen guilty for the accident which tantament to bias the following enquiry where no scope is given to the employees to prove that he is not guilty.

5. The administration always used to term the maximum accidents as the causes of human failure, without identifying the causes of human ailure, without keeping in view the circumstances and the constraints and without considering certain human failure are beyond the control of a men. If any staff work under dures may meet an accident which may also termed as human failure.

6. The staff are not getting proper rest for not being alloted with proper quarter to take rest because most of the quarters either single roomed or condition is bad. Maximum staff are not getting quarter. The conditions of the running room still so bad that its are not suitable for taking rest. If the staff are forced to work more hours, under rest, under dures, under mental suppression due to non availability of school, medical, Bazar facilities etc. which are not available mostly in the road side and unimportant stations lower payment, unabling to meet the market price etc. are also the causes of mental depressions which never used to take into account while coming such conclusions.

p.3.

7. The record note of important points of a meeting of the CRB held on 17.2.1982 presided over by the Minister for Railways is enclosed, as Annexure 'A' which will enlight the real conditions of the Railway System of working which are mainly responsible for the accident The suggestion given by the said meeting not been adhere too by the Railway Ministry and the conditions almost remains as it is as it was. It can be found from the proceedings and the decisions of the said Meeting that as a large number of the accepted recommendations of Kunzru and Wanchoo Committee of 1962 and 1968 respectively have not been impelamented upto the 1982 when the meeting took place and it is still not been implemented.

8 The record note of discussions held by CRB, GMs HODs of Southern and South Central Railways at Madras on 6.9.1981 in regard to Safety will reveal that the Railway Administration subsiding their entire fault tried to switch over the entire responsibilities of accident on to the Railway Staff in the name of erosion of discipline of the workers for the last few years. Still in that, it clearly will revealed that for many accidents it has been confessed that the accidents are secured due to excessive duty hours due to faulty wagons etc. The record note is hereby enclosed as Annexure 'B'. It can also be found from both the record notes as annexed as 'A' and 'B' that whatever is said in the recorded in the record note of Annexure 'B', the meeting of which held earlier than that the meeting which recorded in record note annexed as 'A' just reverse as said in the second meeting. Stillproper step not been taken to rectify the working system on the path as formulated in the Second Meeting.

9 In reply to the unrealistic and unwarranted comments of the then Minister for Railways appeared in a press statement in Delhipress on 9th February 1982, we have given a counter press statement which is self explanatory which has indicated the design of throwingof the responsibility of the accident on the Railway worker. Our statement dated 15th February 1982 is attached herewith as Annexure 'C'.

10 The Press Report of the Indian Express New Delhi August 3rd 1981, on the heads of 'An Accident a day' will show the reality cause of train accident trend of which still not only exists but increased. The Press report is enclosed as Annexure 'D'.

11 The Press report of Times of India dated Friday July 31st 1981, under the heads of 'Railways under Stress' will reveal the accident of a passenger train carrying over 3000 passengers met a serious accident due to the defect in the category bridge which is falled in the category as cited by the Sikri Committee numbering about 1247 to 3533, which has not been rectified and this serious accident caused. The Press Report is enclosed herewith as Annexure 'E'.

12 The Press Report of Hindustan Times dated Saturday August 8, 1981 on the heads of Perils of the Track' will reveal further causes of calourmities of the Railway Administration, almost all the causes are common. The Press Report is enclosed herewith as Annexure 'F'.

12 The following particulars will show that the train accident on each head have been increased (Source: Review of accidents on Indian Government Railways 1978-79, 1979-80, 1980-81, 1981-82). This trend still prevailing. The onlydifference is category of accidents have been changed.

	Categories of Accidents	Years 1978-79	1979-80	1980-81	1981-82
1	Train Accidents	931	900	1013	1130
2	Failure of Railway Equipment	9258	10450	11099	13731
3	Misc. Accident	11083	12189	12885	791

we do not prefer to refer the accident particulars earlier than that of 1979 on which time to time special committees have been appointed w which covered the period from 1962 to 1978 and given their comments and recommendations. Such as Kunzro Committee in 1962, Wanchoo Committee 1968 and Sikri Committee in 1978.

18 This Association from the inception are fighting against introduction of unsafe working conditions in running the train services. It also fighting for the reduction of duty hours of the loco running staff to 8 hours and change of classification of the Loco Running from continuous to Intensive when the category is falling in Intensive Category because there is no period of relaxation after they taking over the charge of the moving 'Power House' irrespective of any traction(i.e. steam, diesel and electric traction) which has not been paid any hoed when the international Labour Organisation has given its clear verdict which states that any driver and crew who are working continuously upto 'six hours' without any break of half an hour after 'Five hours' should autometically coming under the perview of the Intensive Classification and their duty hours should be six hours and should not exceed 8 hours in any case.

In 1973 August 13, after the agitation of the Loco Running Staff, there was an agreement in between our Association and the Ministry of Railways and the Central Government as well, limiting the duty hours of the Runing staff to 10 hours from Signing on the Signing off'. This was announced inthe floor of Parliament on the same day by the then Minister for Railways and recorded in the Lok Sabha debates Vol. III No. 16 pages 235-139 and thus essentially became a part of the National Law. But even after passing 14 years, the agreed duty period maximum to 10 hours from 'Signing on to Signing off' not been introduced. Onthe contrary, the Railway Ministry giving

wide publicity that the 10,hours duty for all Loco Running Staff have been introduced but in reality it introduced taking the time of de arture of the train. So the workers are being forced to work 18-20 hours at a stretch insisting 10 hours duty is to becounted from the actual departure of the train(not from signing on to signing off) when the understanding was further bringing down theduty hours to 8 hours within 3 years of 1973 Aug st 13, agreement. Even after completion of 10 hours duty from the departure of the trains also, the staff are not been released for hours together and insisted on to work the train upto the next crew station on the plea of short of destination. This is not only gross injustice to the workers because the authorities are refusing to treat duties from the period the staff report for duty but gross violation of safe running of the trains ultimately meeting a disastrous accident involving loss of hundreds of human lives and great loss to the National Properties and Exchequer. The recent accident of Gomoh, Eastern Railway on 21st July 1986, when a goods train manned by Gomoh Crew consist of driver Shri Dwarka Prasad and Assistant Driver Shri A.K. Ojha from Asansol direction passed through home signal on danger condition and collided against the Maurya Express face to face which was given line clear and was about to start. The driver and the staff were on 17 hours duty and worked on the threat of service.

On the question of classification also, in addition to fulfill the condition laid down in the HOER (Hours of Employment Regulation) due to Technological updating and introduction of superfast mail/express and goods trains with continued run of 6/7 hours at a stretch, the Loco Running Staff having sustained attention with heavy nerve taxation, should be classified as 'Intensive' staff and the hours should be brought down to 6 hours, maximum to 8 hours after which daily basis overtime should be given.

The present system of payment of over time is fortnightly basis i.e. after completion of 104 hours duty in the fortnight, the overtime is used to pay @ 1½ times and after 108 hours double. The propaganda that the Loco Running getting more over time is not correct. On the contrary due to this fortnightly system for a certain period more hours of work is being abstracted after which before completion of 104 hours duty within that fortnight they are being kept under 'booking control' (Means Lay off) when they neither earn overtime nor they can earn their part of the Pay included in the 'Running Allowance' because the running allowance in totality cannot be earned due to their booking control. Hence there is a serious erosion in their real income. On the other, the pay scale of the Loco Running Staff, who keep the Railway on move, ultimately the nation on move with their arduous nature of job with severe concentration and nerve taxation are kept in a very poor scale. The driver who are running the superfast Mail/Express were in Rs. 550-750 as per 4th Pay Commission Rs. 1640-2900. The driver who runs Passenger trains were in the scale of Rs. 550-700 now placed in the scale of Rs. 1600- to Rs. 2600/- The driver who run Goods trains were in Rs. 425-640 and 330-560 now placed in the scale of Rs. 1350-2200. The shunting driver who were in

Rs. 290-400 and Rs. 330-560 have been placed in Rs. 1200-Rs. 2040. In the similar way, the Assistant Driver, Fireman in the scale of Rs. 950-1500 and Fireman II in the scale of Rs. 825-1200 when they are performing so much of responsible and risky job and their counterparts in Britain Japan and other Capitalist countries are termed as Locomotive Engineer without having engineering degree and drawing the amounts with manyfold more than that of their Indian counterparts what to speak of socialist countries. Even in the other Industry like Steel Bhel, Port and dock of our country where the staff performing not so much of risky and strenuous job are also better paid than that of the Loco Running Staff of Railway Industry. The question of Pay scale have been mentioned here because some of the Hon'ble members during the course of Oral evidence raise question because they are also been influenced by the propaganda of the Railway Ministry. Only to clear their doubt the question has been referred.

14. The HOER is the component rule of the main Railway Act. So the question of replacement the classification of the category limiting to the duty hours accordingly, the normal rest at head quarter and running rooms and the periodical rest and strictly observance of the same. Similarly allotment of quarter better type at least of two roomed better condition of the running room are also should be earmarked. In these days of so much of load sheding, the quarter of the Running Staff must be provided with emergency Electric Connection as like as DRM Bunglow.

15. The second component part of the Railway Act is the 'General Rules' envisaged as required by Section 47 of the Indian Railways Act 1890 (9 of 1890) and Administered by the Govt. in 1976 for the open line working of the Railway System including safe running of the train services. The applicability of General rules referring to the working of signals track and trains under the following systems:

(i) The Absolute block system.

(ii) The Autometic Block System.

(iii)The following train system

(iv) The Pilot Guard System

(v) The train staff and Ticket system.

(vi) The one train only system.

All the above systems have been evolved under the General Rules which has been constituted in exercise of the Powers conferred by Section 47 of the Indian Railways Act 1890 (9 of 1890)

16 The 'Subsidiary Rate 'Under a special instruction which' sub servient to the General Rule to which, it relates and shall not be at variance with any General Rule but in fact the main contents of the General Rule it drastically varried.

17 The 'Axle Counter' means an Electrical device which when provided at two given points on thetrack proves by counting axle in and counting axle out, whether the section of

the track between the said two points as clear as occupied.

18 The Track circuit means an Electrical Circuit provided to detect the presence of a vehicle on a portion of track forming part of the circuit.

19 Under the General Rule 4.23, no train should run without any Brake van and the position of Brake Van in the train is also stated under the GR 1.6.24.

20. Provision of Guard in the Brake is constituted the safe running of the trains except in case of extreme emergency (under GR1 4.25).

21 (i) The GR1 4.30 precaution by driver and Guard before starting a train.

(ii)GR1 4.34 - Duties of Guard when taking over the charge of a train.

(iii)GR1 4.35 (3) The Guard shall not give the signal for starting unless he is satisfied.

(iv)GR1 4.42 (1) (2) : Exchange of signals between Driver and Guard and the station Staff.

(v)Similarly GR1 4.46, GR1 4.47, GR1 4.48, GR1 4.60 in regards to the Guard's Assistance from Hand brake and its application permission to detach engine etc.

(vi)GR1 6.03(2) Protection of trains by Guard in case between stations.

(vii)GR1 6.08 in case train parting

(viii)GR1 6.09 in case of portion of train left in the block sector and its protection etc.

(ix)GR1 9.2 protection of train in automatic section

22 When according to GR1 as stated in paras 19,20,21 above the provision of Brake Vans and guard constituted the safe running of the train services, but the Railway Board and the Ministry of Railways is bent upon to force the working of thetrain without Brake Van and guard in a regular measure when the provision is there to do the same, in extreme emergency. In addition to the vast duty of the drivers and the Engine crew how they can perform all theduty of the guard of a train which are in various nature - specially train protection in the mid section is a very important in nature. If in absence of guard at the lst instance of train parting is protected and watched by the asstt. Driver, when the lst portion will be taken by thedriver and by the chance if there happened second part who will be then protecting the second portion in absence of which there may be a great massacre and lead to a disastrous accident for any other mistake.

23 There are many accidents happened on these account which involved human lives. The disastrous train accident in between the Garwa Road and Toira Station, Eastern

Railway, Dhanbad Division on 6.8.86 due to no guard in the diesel goods train no. 3656 on from Mugal Sarai to Patratu with 43 Box wagons and brake van against the parted portion of which 162 Dn Tata Amritsar Express dashed and constituted a serious accident involving a great numbers of human lives including the driver and the Asstt. Driver. Had there been a guard in the goods train which has been parted the rear portion would have been protected and the accident tbe saved.

The goods train originally with Mugal Sarai crew and guard consist of driver Nankoo and Asstt Driver and the guard D.K. Singh. At Sone East Bank(Sone Nagar) the crew was changed and the driver Shri T.K. Pandey and Asstt. Driver Shri Jagdish Prasad of Patratu have taken over the charge but the guard Shri D.K. Singh worked upto Garawa Road which is border of Mugalsarai and Dhanbad Division. The Driver of the train issued with a memo that the train will work without guar d Ex-Garawa Road to Patratu.

The diesel goods train after leaving Garwa Road passed Toira Station through and arrived Rajrali Station where it stopped most probably for giving precedence to 162 Dn Amritsar Tata Express which was following and was on the line clear. In the meantime, after getting the line clear from Garwa Road, the 162 Dn Tata Express Engine No. 17384 worked by the Driver Bechari Ram and Asstt. Driver Mohd. Asraf of Patratu Loco Shed left Garwa Road and met an accident with Brake van and five box wagons remained parted in the block station between Garwa Road and Toira Station. Brake Van and Two box wagons of p rted (goods train and the train engine and two compartments of 162 Dn fell down in the river which taken away many valuable lives includes the driver and the Asstt. Driver of 162 Dn Tata Amritsar Express train. The driver tried their level best to save the accident upto the last and sacrificed their lives.

The calousness of the Railway Administration and their drastic violation of safe working condition are mainly responsible for the serious accident which involved many valuables lives. For this criminal offence, the official of the Dhanbad Division not been served with any exemplary punishment by which they can be cautious and refrained from any such act in future. The accident have been occured for the following reasons:.

(i) For introducing new working system which have got no guarantee and failed any time which bound to cause such accident.

(ii) For defective mechanisation which is not replaced though over due.

(iii) For introducing unsafe working conditions. Though the provision of Guard is one of the best measure for safe running of trains but the trains are being worked without providing guard and for that the admn. has given in writing to work the train without guard.

24 It is in the record of every accident that the Engine crew never jumped of the engine out of their sense of responsibilities, and try to save the accident upto the last

minute and thus sacrifice their valuable lives. In this case also both the driver and the Asstt. Driver have been sacrificed their lives.

Now the partinent question is why such play of the official of Railways with the hundreds of valuable lives why they are not been served with major punishment. How far it will continue.

25 But this has not been stopped there. Still lesson not been taken by the Railway Board. Even before the blood shed of hundreds of valuable lives are being dried, the Railway Board come out with a circular No. 86/Safety (M&R)/29/6 dated New Delhi 22nd July 1986 addressed to all the General Managers on the subject of running of trains with 'N' Box rakes without guard and brake vans on experimental basis for three months with effect from 1.8.1986. Railways have been instructed to issue special instructions and in case of disable obstructions etc. the responsibilities of the guard will be borned by the driver. The driver in addition to his own duty of different types will have to perform the vast duties of a guard permanently for three months which bound to lead any type of incidence. If it is saved that is not due to any guarantee. The circular is enclosed as Annexure 'G'.

In para 2 of the above circular of Railwey Board, it the referred General Rules and special instructions, there is noninstructions laid down that in permanent measure, in case of train parting how to protect the rear portion, in case the Asstt. Driver left for the protection of one rear portion, if there is further any untoward happenings defect etc. in the Engine, required for Asstt, who will perform the job of Assistant to the Driver. There will bound to lead further masacre.

Secondly, the areas of track circuiting of block sections the guard and Brake van should be dispensed with as provided in Some Rlys subsidiary rules when the definition of subsidiary rules clearly indicates that it will be only sub servient to the General Rule to which it relates and shall not be at variance with any General Rule. But in this case, it is drastically varying. In addition to that there is no guarantee of such track circuiting, because there are ample of example of its failure and may cause such disastrous accident like Garwa Road. The Railway Board as it knowingly bent upon to cause this type of accident which can be avoided is nothing but criminal offence.

The members of the Committee may please see the comment of the CRB meeting attached as Annexure 'A' of dated 17.2.1982 under Item 3 which states that the 'Odds to the staff in discharging the duties efficiently like Track Circuiting, axle counters, interlocking, ultra sonic flow-detectors etc. are inadequate. There should be a definite assessment of the extent to which these have been provided and positive plan should be drawn up for provision of these facilities, in future' Accordingly, the Railway Board certainly be

cautious and should refrain from unnecessarily causing murder of the valuable lives.

EXAMINATION OF THE TRAINS AND ADEQUATE BRAKE POWER AND ISSUING PROPER VACUUM CERTIFICATE

For ensuring proper examination of the trains and its adequate brake powers and issuing of its certificate said to be the mechanical 'V5' Where detailed of the piston working, how much active inactive, IOP etc. have been given by which the driver of the train is assured that the train . on application of the vacuum brake will bound to stop within the adequate distance of 965 metars.

For that the carriage and wagon department consisting authorised Train Examinar along with the carriage staff are being appointed.

The system of carriage examination was within 300/400 Km the carriage must be examined. For that in different stations Train Examiner and the carriage staff have been posted which now been almost done away with. The intermediate carriage examination have been done away with

(i) In case of clearing of stabble trains the carriage examination and issuing of fresh vacuum certificate have been done away with.

(ii)In case of changing of the train engines, the system of issuing of fresh vacuum certificates have been done away with.

(iii)In case of Performance of Shunting the existing train checking system has been completely abandoned.

(iv) The Examination of the carriage after 300/400 KM has been replaced by 2000 KM. After the tremendous fight of this Association, it has been brought down to 800 KM. That too the administration is not implementing the same.

(v) The end to end vacuum certificate is issued without considering the following defects:

(a) Staff to work on the old vacuum certificate means the outgoing driver of the train cannot assess the perfectness of the brakepower of the train.

(b) The active, inactive and IOP piston cannot be properly detected.

(c) The slackness of brake block due to decaying of brake blocks out of its rubbing with the wheels cannot be properly assess because of neither it is examined nor it is adjusted.

(d) Three/four times, the train engines of different traction changed but the fresh vacuum certificate is not being issued which may bring variation of quantum of vacuum and brake power because of the succession power of the exhauster of Engines of different tractions is varried which bound to

cause variation of the brake power and may cause severe accident.

28 The brake power in case of passenger must be cent per cent and that of freight service should be 85% which will ensure stoppage of train within adequate distance after application of vacuum brake, but in practice its are not been adhere too by theRailway administration. If the driver stand for the proper percentage of brake power he would have been subjected to punishment.

(i) Driver Shri B.C. Biswas of Anara SE Railway issued with the punishment for stoppage of increment of two years for claiming adequate brake power while working train. No. 35525 which was suffered with brake power of 55% at Madhu Kunda, when he has been asked to proceed upto the next carriage examination station. Shri Biswas only asked to define the responsibility if the accident occur due to inadequate brake power. But Shri Biswas has been served with the punishment of stoppage of increment of two years i.e. the Railway administration is bent upon to compell the workers to accept such unsafe working condition on the threat of punishment whatever may be the consequence of it, without considering that the 'KINETIC ENERGY' generated in run may often become uncontrolable particularly in gradient and with heavier trains. On 27.8.86 Diesel HSL goods over shooted the departure signal of Kumarmunda Station SE Rly. Chakradharpur division for poor brake power with excess load of 342 tonnes on the stiff gradient route section

29 Due to non checkingof the carriage in time and proper way the train pipe are being jumped in such a manner that in east of train parting, there was no droppage of vacuum and no indication on thedriver desk which led to a disastrous accident may be averted for the alertness of the driver and other staff Railway Staff.

(i) Train perting experienced no drappage of vacuum in between Jamga and Dagora in Bilashpur division of S.E. Rly. on 3.12.1982 train No. MBB Driver K.D. Agashi and Saved serious accident of 1 Dn(Bombay Howrah Mail) which is supposed to pass on the sameline, due to vigilent of the driver. who after passing neutral section(Electrified areas) suspecting something was wrong as the vacuum was fluctuating. On through signal, thedriver stopped the train checked and found a portion of the train was missing,. He informed the ASM Dagora, who is also witnessed thefull pressure of the vacuum, due to which the disastrous accidont of 1 Dn was saved.

(ii) (ii) Trouble due to pressure in the brake van of Train No. BRMP Crack 38 I/C Box Spl. on 23.8.87 which was detected at the carriage checking station at Anara SE Rly. for which the train detained by 16 hours at Anara. The train was incoming one. If it would have not been detected at the carriage checking station, there might have been any ace incidance.

On 14.7.1987, the train No. [illegible]/SPL Loco No. 453 working by Driver K.K. Mukherjee Ex-Purnpur, the vacuum was not dropped and there was no indication when the brake van was disconnected in between Madhupunda - Muradi of Adra division in SE Rly. There might have been a serious accident if the RAilwymen are not vigilent, who have rightly detected at Muradi and the train was stopped at Ramkanali on checking it was found that the train pipe was jumped by a dead big rate in between the brake van and other wagons.

(iv) On 24.5.87 UDL/SPL with engine no. 310 while working by driver HM Mukherejee Ex-Radhanagar of Adra Division SE Rly. The vacuum certificate issued which was showing brake power of 85% and 50 cm. vacuum on engine gauge with no much time, suffered derailment at Damodar link. On joint checking only found 65.7% brake power and brought out about 14 grams and 600 miligrams jute from the train pipe.

(v)On 27.8.86 Diesel HSL Spl goods train with engine no. 18198 Driver R.C. Paswan of BRMP over shouted the departure signal of Kumar Munda Station on the BRMP Rou Section of Chakradharpurdivison of S.E. Rly collided head on with the Electric K.O. Empty Spl. goods train which being detained at the outer signals due to poor brake power and excess load. It being a stiff gradiant section the percentage of brake power should have been cent percent. But as like ordinary section, the brake power was given 85% as shown in the vacuum brake certificate (mechanical V5) issued to the driver of Diesel HSL Spl goods train. After the accident, on the Joint Checking, it was found that the brake power was only 38.2 %. The particular of which are as follows:

Total Piston = 24/48 , IOP 8, Dummy - I
ESP = 5, B/Blocks not gripping = 54
Brake Blocks, nearly 7 IOP
Total ineffective = 21 piston
Total Pistons working = 13
Brake power percentage = 38.2%.

In the safety Bulletin 'SANRAK SHA' special issue December 1986, published by Chief Traffic Safety Superintendent SE Rly Garden Reach Calcutta 43, the responsibility has been fixed to TXR/BRMP due to allowed the train with poor brake power, rules violated GR1 4.31 and SR 4.31.01 Joint Circular No. M2/1336/26/PT, V 83 dated 31.3.1983. But the same train was excess load by 342 tonnes. BRMP/Rourkela section allowed load is only 1800 tonnes but the train was excess load with 2142 tonnes.

The one of the cause of this accident was excess load which was not been detected and the resp nsibility of allowing this excess load in the train which met a disastrous accident causing the section blocked for 47 hours 50 mts: cost of damage was Rs. 44,90,000/- with grevious injury of staff and minor injury of 5 staff.

In all the above stated causes though the cause of accident were due to calousness of the Railway administration and or responsibility fixed otherwise, still the loco running staff have been issued with major or minor charge sheets and propose to serve with punishments and some cases the punishment also be issued.

CONDITION OF ROLLING STOCK

30 The Railway Board in their evidence before the 56th Estimate Committee's headed by Shri Bansi Lall stated that the following were the total holding of coaches at the beginning of the 6th Five Year Plan.

Total Coaches	Overaged
BG out of 2066 2	1505
MG out of 1338 1	1109
NG out of 1518	672

According to this, total number of over aged coaches are 3286 which warrants immediate replacement apart from those required for new trains.

During the evidence the Railway Board also stated that the total fund allotted by the Planning Commission in the 6th Five Year Plan is Rs. 2100 Crore which has been splited in the following four heads viz.

Locomotive	420 Crores
Coaches	447 Crores
EMU	33 Crores
Wagons	1200 Crores

It was also admitted by the Railway Board that if the total amount is utilised for manufacturing of coaches it may bepossible to produced only 5680 coaches. But by the share of allotment of fund by the Railway Ministry as shown above, it will only be able to manufacture about 1000 coaches. That overaged stock of the coaches bound to be increased progressively and the day is not far away when it will be seen that almost all the coaches got overaged.

The Ministry for Railways under para 2,52 of the Said Report also admitted about the two problems of replacement of the coach, one is for scargity of fund and the other is inadequate capacity of production.

There is also an evidence under para 2.34 against the requirement 1984-85 which was assessed 11000 Crores only Rs. 5100 Crores have been provided for in the Plan.

The conditi n of the other stocks are more precarious which can easily be assessed from the following statistics which are available in the record of the Railways:

Traction coaches	11.8% overaged
Convertional coaches	19.8% overaged
Wagons	17.25% overaged
Electric Locomotive	11.2 % overaged
Motor coaches	23.6% overaged.

The above is the position of only three stocks which are based at Kancharapura and have remained overdue for periodical over hauling.

The position on all India level are more serious which enumerated below:

	(Diesel & Steam)
Locomotive (Diesel & Steam)	1100
Electric Engines	1200
EMU Coaches	400
Coaches	8000
Wagons	65000

Though the tec hnical guarantee of all rolling stock is 15 years but the Railway Ministry declared that the rolling stock would continue to be economically viable as follows in the name of so called optimum utilisation of assets.

Engines	30 years
Coaches	30 years
Wagons	25 years.

So the steam engines acquired before 1955, the EMU coaches (Metro Camel) ac quired in the year 1951, the EMU coaches (MAN) acquired in 1958 are already overaged. The 1st instalments of electric and diesel engines are required to be thoroughly overhauled for which necessary spare parts are not available.

The condition of the EMU coaches were very bad. In many coaches 8 traction motors are not provided. Tractive efforts were very less, which creates problem in speeding and the braking and accelarating and decelarating.

The maint nance of the rolling stocks are not properly done.

The method of 'Canbitization that is fitting parts from one stock to other and one engine to other, are being carried on without proper scientific test of 'Metal Fatigue'

Mechanical failure arrise maximum out of these. The meeting of CMES HELD in Septembe 1981 decided that hurried repairs will not be resorted to hence forth.

31. The bad conditions of EMU coaches and electric engines can be guessed from the following few illustrations:

(i) On 4.12.1983, the EMU coach to work K/101 up EXP P-[illegible]10 of Howrah Station dashed against the buff r end due to failure of automatic brake and motor man sustained injury The auto brake was repeatedly booked for repairs but the same was allowed in the same condition without repairs.

(ii)on 18.12.1983, the EMU coach No. K/106 Kharagpur to Howrah dashed against dead end buffer at 9/20 hrs. i.e. at the peak hours on PF No. 13 but due to failure of auto brake which was repeated booked for repairs, caused injury to 25 passengers.

(ii)On 12.4.1984, Loco No. 21299 WM 4 was booked to work 9 UP (Jagarnath Express) with driver Shri HH Roy Gr./ A Spl. The maximum permissible speed of the engine was 40 KM PH. It was inserted on the engine as well as log book of the engine. But it was matter of great surprised when the driver gave memo about the maximum permissible speed of the engine, the train made stopped at Santraga-chi and the Traction Foreman (RS) came and unilaterally changed the speed of the engine by raising it 90 KMPH and allowed for a trip. The Jagarnath express ran safely upto Kharagpur due to skillness of the driver.

CONDITION OF THE BRIDGES

32 Distressed bridged have come to 3553 accordi-ng to SIKRI COMMITTEE which are not being replaced.

(i)The Rockfort Express met a serious accident involving hundreds of human lives and thousands with grievious injury in the early time of 15.3.1987 while crossing the Marnthiyar River. The similar type of accident was occured in the year 1956 at the same place, when the then Minister of Railway late Shri Lal Bahadur Shastri tendered his resignation from the office of the Railway Ministry due to his noble sense of res onsibility. The same bridge is fallen under the category as identified by the Sikri Committee. Now the pertinent question is who is responsible for this disastrours accident and massacre of the hundreds of the valuable human lives.

(ii) The bridge on the Bagmati river of NE Railway on which a passenger train accident occured in 1981 and several bogies were fell down in the river caused the death of thousands of valuable lives is also one of such disastrous distress bridge listed by the Sikri Committee. It is in the record that the then Minister for Railways, Late Kedar Nath Pandey came out with a statement which

states that the accident occured due to sudden application of emergency brake when the emergency brake is designed mechanically in such a manner that its application cannot cause any accident. If such be the case why Railway has provided such defective brake in the engine which required to apply in emergency. However, while giving evidence before the Estimate Committee the then Chairman Railway Board admitted under para 1.51 of Chapter II that sudden application of brakes will not result in derailment.

(iii)The Railway Board while giving evidence under para 2.25 of Chapter II has admitted that the number of such bridges are 2539 out of which on 202 bridges though serious restrictions of speeds have been imposed are not safe.

There are ample of examples which time to time came into light, and we represented the same

CONDITION OF TRACK AND ITS AREAR OF RENEWALS AND INTRODUCTION OF CONTRACT SYSTEM IN TRACK MAINTENANCE

33 (i) In the Chapter II of the 56th report of the Estimate Committee it has been recorded that the Railway Board while giving evidence before the Committee said that during 6th Five Year Plan (1980-85) the requirement of the Track Renewals arear which at the beginning of Six Five Year Plan had been 13048 KM and increased during 6th Five Year Plan by 16000 KM. Totalling to 29048 KM But during this period the sanction of Rs. 5000 crores can onlydo the renewals of 14000 KM. This means tha the arrears increased by 2000 KM than that of at the beginning of 6th Five Year Plan remained untouched by 15048 KMs.

(ii)In reply to the quirry of the Committee, the Railway further admits that the safety margin further reduced and the number of Rail Fractures is progressively increasing when at that time, the rail fractures in 11000 track kilometerage wer detected by ultrasonic flaw detectors as 1130 rai fractures.

(iii) In para 2.11 of Chapter II the Railway Board officials further clarified that if 3300 KM of track is renewed every year than the arears can be cleared by within 10 years.

(iv) The Committee in para 2.13 of Chapter II had to express alarm on hearing the precarious condition of the Railway track maintenance and its arrears of renewals.

(v) The Railway Board officials mentioned in Para 2.14 and 2.15 of Chapter II that

(a) Imposition of Speed restriction

(b) Increase in maintenance efforts

(c) Increase in vigilence to detect defective rails.

(d) Increase in casual inputs and admit that these measures were not adequate.

For these no remedial measures could be asserted by the Ministry of Railway excepting the detecting of the defect by introducing ultrasonic flow detectors.

In fact

(a) That arrears already reached to more than 27000 route Kilometerage, the condition of which are very bad and required immediate renewals due to which the accident are taking place.

(b) Now a days, the deep screening, line changing, sleeper changing, change of ballast, packing etc. are being done by the contract labour system, who are not having any experience about the maintainance of track. This is not only against safety but also breeds corruption.

(c) Further variation of gauge scanty ballast, cushions wearing out of rails are also causing safety hazards.

(d) On accountof defective track on trunk routes, cautious driving are introduced in a large scale but without revising the running time providing for the loss of time due to cautious driving, the drivers are forced to make up the time on the threat of service either by over speeding or ignoring the speed restrictions. The most unfortunate matter is if any accident occured, the driver and engine crew are declared responsible.

(e) In the passenger mail express train, the trains are getting late due to loading and unloading in a heavy way. The loss of time are being forced on the driver to make up at the cost of violation of safety without alloting more time for the loading and unloading.

SIGNALLING SYSTEM & BACK DATED PROCESS AND EQUIPMENTS.

34. While giving evidence before the 56th'Estimate Committee' the Ministry of Railways stated vide Para 2.38 of Chapter II (d) that in 1221 stations, the signalling equipment is overdue for replacement out of which the numbers of stations where the signalling equipments become a safety hazards. The Ministry further stated that since the financial requirement is not meted out the question of replacement, the arrears are mounting.

The Position:

(i) The other side of the pictur has remained in darkness which is most vital in nature. That is the substantial growth in the traffic and the speeds which demands much development in the signalling system. The signallingsystem in the Railway is stillmore or less outdated.

(ii) In the deleveration of the said Committee neither the Railway Ministry mentioned about the idea of future plan of developing the signalling system at par with the growth of the traffic nor the committee enquired about the same.

(iii) The placement of signals at the wrong place and non provisions of repeater signals in the required place are also the cause of safety hazards. The serious head on collision at 'BADWABARA' in Bilashpur division, SE Rly. occured due to such position in the year 1982. The accident occured within a short distance from the point of visibility of the signal.

(iv) It is also in the record that the automatic signalling system said to be the most perfect signalling system have been observed that have suffered frequent failures. In Sealdah, Howrah Division, of Eastern Railway Adra Division (Chandil-Kandra-SINI - Tata Section) of SE Rly. and Central and Western Railways Bombay areas numbers of cases happened in those section whena train occupied a signalling section, the signal protecting that section was showing either yellow or green instead of 'RED' and many inevitable accidents were saved due to vigilent of the drivers and motorman.

(v) A frequent failure of 'MOMA' signals is a recurring feature and there is no other alternative protectionagainst the driver passing them in 'ON' position when lights are extinguished.

(vi) There is no record also for the drivers, on what condition of signals, the driver has passed it.

(vii) The signallingsystems in Railways still so backward that the driver has to pass various types of signalling systems during his one trip. That is for some distance automatic, some distance 'MOMA' Token system, Token less systems, some where lower quadrant, upper quadrant etc. It become a cause of serious taxation on the engine crew to follow all these varities of signalling systems and surely frought with danger. These are the working of safety hazards Remedy lies with the introducing of one signalling system replacing multiplicity of signalling systems.

REVISION OF GENERAL RULES AT PAR WITH PRESENT STATE OF TRAIN SPEEDS AND TECHNOLOGICAL UPDATING

35 (i) The Railway Board while giving evidence before the Estimate Committee stressed under the Para 1.43 and 1.44 of Chapter I that the General Rule required a thorough revision according to speed at which the trains and rolling stock are to be moved, so as to ensure safety. The witnessed alsoplaced that a new set of rules have been finalised and introduced by July 1983. The new rules have been termed as General Rules 1976. It is also stated by the witness that the whole of the rules have been re-drafted on that view points.

(ii) As far as the General Rules are concerned, it has been stated while giving evidences before the committee that the rules have been amended on 72/73 occassions. In fact, which replaced the many of safe working conditions which are con-sidered by the administration as harder one in application.

(iii) Our experience also revealed that whatever the amendments have been done, they are not done according to the spirit as stated in their evidence rather its have worsen the existing conditi n.

Because according to the speeds and other working conditions of the trains more concrete safe workkng rules are required to be framed but time to time amendments brought more conflicts and ambiguity in the General Rules. The last amendment done in 1983 further bring provision that train also may run'without guard and without Brake van' which are a gross safety hazards This is not the solitary instances. All of those cannot be referred here but on comparison with the previous General Rules it may easily be identified. This Association considered and represented many a times demanding that the General Rules required a thorough discussion on point to point and rule should be revised on scientific basis, if the Railway Ministry at all interested to make the Railway as accident Free.

ABOUT THE GUARANTED TECHNOLOGY OF THE TRAIN OPERATION SYSTEM.

36 (i) While giving evidence before the Estimate Committee, the Board officials were talking about guaranted machines and aparatus, in the signalling Route Relay interlocking Axle counter, Track ciremting, Thyresters control, ultrasonic flow detector, checking up of hot axle, Roller bearing etc. but in practice the failure of the machines also experienced every now and then and many accidents have been saved due to vigilence of the drivers. Under the heading of signalling system, we have already cited examples of how the so called most perfect Automatic Signalling System' is failed. Here in below another examples are being cited.

(ii) In S.E. Rly. in between Gamaria Adityapur in Chakradharpur division Box Wagon No. 60262 SC of train no. BJ4 derailed on 22.9.1982 while going down direction to Tata, rear bogies i.e. 4 wheels of Box wagons infringes the up line. The position of the derailed Box was 36 from Engine. Further it was found that 4 box wagons attached brake van derailed and jumped the cross over of up and down line. It was seen that though the up line was infringed with the derailed Box wagon, the route relay indication at tower of Gamaria Station was showing clear. The time was for 2 Up (Howrah-Bombay Mail via Nagpur) But the disastrous accident was saved due to vigilence and presence of mind of the engine crew of the derailed goods train, who intimated the station Master of the Station, the Signal given for 2 UP was put back to danger.

(iii) It means there is no guarantee of these sophisticated machines basing on which the Railway Administration expressed proud of safety measures and used to delegate the responsibilities on the shoulder of the staff in the name of human failure or gross mis conduct'.

It was learnt that there was an enquiry in this connection ,but it is not known what steps have been taken.

(iv) The roller bearing are guaranteed. But it is a matter

of great astonishment while summing up the outcome of the Joint Directors Railway Board who deputed to investigate the causes of accidents, the witness of the Railway Ministry while giving evidence before the Committee, what has been spelled out, the whole gamout were to shieft the responsibilities on the shoulder of the staff, on the head of 'not examinedproperly' The witness also continue to say further in the following term:

- The procedure of ultrasonic check up of the axle was not followed

- The safety brackets to check the failing of the brakes were not checked.

- The checking of track including ultrasonic checking was not done

SINGLE MANNING IN EMU DRIVING MOST UNSAFE

37 (i) Single manning driving of EMU coaches with several thousands of passangers most dangerous workkng procedures The Railway administration plea of provision of safety measure is'Dead Men's Handle' in the motor man cab connected wit the manipulator which if not kept pressed will bring the train to stop. But if it is kept pressed the train will be on movement, speeds and on coasting But if the reverser brought to 'O' while coasting, it will remain on run if the motor man got unconscious and fell down on the manipulator, the dead man's handle remained press and the EMU coaches will remain on operative condition, on speed and on coasting and will bound to cause a serious accident, which cannot be avoided. Naturally it cannot be treated as safety measure.

(ii) The EMU train accident took place at Howrah near Car Shed on 16.3.1983 after which the then Minister for Railways Shri A.B.A. Gani Khan Chaudhury while giving statement stressed on the following points.

(a) In addition to the Motor man, an Asstt. Driver will be provided which was provided immediately but after 3/4 months it was withdrawn.

(b) Regular medical examinations be done which are in practice periodically as per procedure and'A1' fitness which is highest Medical Fitness.

(c) Frequent refresher course training which are in practice done but what is taught in the training school if implied staff are subjected to punishment the many examples of which have been given.

(d) Regular examination of coaches which is practically not done, already explained in other items.

(e) Regular checking of brake powerwhich is not done, the ample example of which have been given.

(f) Regular checking up signal and signalling systems which are done occassionally.

(g) Surprised check up of the driving by the expert officers which are in practice done by the JDI, LI, and SM because of creation of many Inspectors posts even by maching surrendering of staff vacancies. This creats hinderance and disturbances at the time of driving the EMU coaches and became the safety hazards.

(h) Running of trains at par with time table which are most irregular in practice and became the cause of irritation of the commuters.

(i) Trained senior most, experienced drivers will be given promotion which in practice drastically violated due to introduction of selection when the senior most experienced persons are not getting promotion because they may not be selected because of selection of juniors in experience and yesman as the selection is nothing butan 'eye wash'

If the sealdah Division Motorman Roster is checked it can be ascertained that though seniority is zonewise, the senior most people are not getting promotion when the most juniors are enjoying promotion as Motorman.

(j) The utilisation of most junior 'C' grade driver forcibly or favourably to work in the passanger train are also causes serious accident.

The 364 Dn Lalgola Sealdah Passenger which was involved in accident was being driven, who on his very first assignment on promotion to Driver 'C' from Shunter had been given charge of a passenger. He worked passenger trains continuously for 5 days after his promotion as Driver Grade 'C' and the accident occured on the fifth day.

SO CALLED STUDY OF CAUSES OF ACCIDENTS AND FABRICATED BLAMES/CHARGES ON THE STAFF

(i) The Railway Ministry while giving witness in the Estimate Committee under para 3.12 of the Chapter III stated that a team of Joint Directors has visited different zones and submitted a note on the difficiencies or lapunae in operating or maintenance practices.

(ii) In para 3.13 of Chapter III whatever has been said while summing up the outcome of the study conducted by the team of Joint Directors are vague as most of the causes mentioned are indicative of only efforts of bringing consciousness amongst the workers or to malign them in order to cover up the fault of the Railway Administration as would be revealed from the following:

(i) Safety consciousness by holding safety meetings. In suchmeeting only lectures are being delivered without acknowledging the difficulties, problems in regards to violation of safety and other measures from the concerning workers. Our Association irrespective of any invitation by the Railway Administration or any accident Committee submitted its view points in writing but our physical attendence not been entertained and the view points submitted in writting is not taken into consideration.

The 56th Estimate Committee, the reference of which we have given in the note was specially set up to deal with the Railway Safety and accidents. But unfortunately one sided deliveration has been taken into consideration in coming to the conclusion and suggestion of the remedial measures which cannot do the justice to the concerning staff connected with the train operations.

(ii) While dealing with the subjects being an organised labour representing the venguard of the train movement, the Loco Running Staff(The driver of all Tractions, Asstt. Drivers, Fireman, Shunters etc.) should have been at least asked to submit the memorandum for the consideration of the Committee, if not at all entertain our witness, which have been drastically ignored and our Associations' endeavour of securing safe running of the train has been defeated.

(iii) The said Committee's one of the conclusionswas that the accident occured due to illiteracy. So the persons having diploma in mechanical and electrical should be recruited as Assistant Driver (diesel and electric) and Engineering diploma holder should be appointed as direct driver which will jeopardise the safety in a large scale. Because being an Asstt. Driver and Driver are a continuous process for which experience of 10 and 15 years are required, because in addition to education of mechanical and electrical subjects many other important related matters are there which cannot bemeted out by a direct recruit driver having engineering degree.

(iv) The main points are the safety process of train working are violated. For example in the yard pooled trains, the handing over taking over of the charges have been forced on the engine crew by '0' minute when the outgoing driver will be in quite darkness about the conditions of the particular train, which bound to jeopardise the safety of the train operation.

(v) The training received by the staff cannot act accordingly and safety measures as per existing rules even, which are most inadequate though taught at the training school are not been provided to the workers. If demands the staff are being forced to work without providing the same. So the re-iterating of giving safety training again and again is nothing but a measure of shielding the faults of theRailway Administration.

(vi) The introduction breath-analyser test to all the staff are nothing but heating the dignity of the loco running staff and to demoralise them in order to see that they are not raised voice on the question of administrative faults. Because uphill now no persons could be detected as intoxicated position but due to defect in the machines the innocent persons are being harrased. The real position is the Railway Administration used to make the workers in habit of drinking to utilise them at the time of the workers movement on their legitimate demands. All theseprocess are for shielding the

fault of the Railway Administration. This Association certainly wants the guilty persons should be punished who are creating hinderances in several means in safe and smoother running of the Railways.

LOCO RUNNING STAFF REPRESSED VICTIMISED AND HARRASED

39 (i) For leading for this best work from the very inception of the Association, it is bad named maligned by the Railway Administration and the members of the Loco Running Staff have been repressed,victimised and harrassed on every point in order to create fear sychosis amongst the workers about the Association because this Association refused to compromise on the issues pertaining to the safety of the Loco Running Staff,Railwayman,as well as the travelling public. The Railway Administration is not onlyinterested but advocates and pressed the workers to be the members of those so called recognised Federations who are compromising on the essential issues of the workers and the travelling public either by accepting non filling up the vacancies, surrendering or matching surrendering of post surrendering employment potentiality accepting more hours of work and reduction in staff strength. Though this Association is enjoying the Confidence of the maximum members of the Loco Running staff even ignoring this Association, the Administration is making agreement with the leaderships of those federations which not only anti workers but also anti people and jeopardise the national exchequer but benefitted for their own interest and the interest of such powerful persons in the Railway Administration.

(ii) The1981 agitation of the Loco Running Staff was only against the unsafe system of working which were abruptly introduced after Mr Gujral assuming the post of the Railway Board Chairman. Our all endeavour of making the amicable solution were defeated. Rather the existing Loco Running Grievance Committe was woned up, staff raising voice against such unsafe working conditions have been subjected to dismissal which ultimately led to all India agitation in 1981. But the Railway Ministry and the Central Government without considering the justification of the causes of agitation confronted its own workers on war footing and punished about 10 thousand Loco Running staff in different methods out of which 676 staff have been dismissed/removed under draconion rule 14(11) of D&A rules under Article 311(2)(a) (b)(c) of the Constitution of India without giving opportunity of self defence. Though the different high courts given judgement quashing the order of dismissal or stay the orders of dismissals but the retrograde judgement of the Supreme Court unfortunately delivered on 11th July, 1985 given sanction to the arbitrary orders of the Railway officials and strengthen the hands of whims. Naturally the workers will loose their confidence on such authoritarian set up.

(iii)Now in practice on the threat of service and by creating fear sychosis the Railway Ministry doing all the misdeeds jeopardising the safety of train operation The clauses in the Railway Act Amendment Bill against which our best efforts to put resistence because of its get passed, the workers will be pushed to accept slave like working condition when there will not be any control.

(iv) So this Association's fervent request is to the Hon'ble Members of the Committee to consider our points with seriousness to apply their noble mind and save the Railways Railwaymen in general and the Loco Running staff in particular, the travelling public and nation as a whole from the ruineness.

(v) This Association is in a position to produce more evidences in support of our statement, reppresentations etc.

This Association only request the Hon'ble Membersof the Committee and the Chairman of the Committee to supply us the statement of the Railways in order to further aware the members of the committee with more valuable information which may act as guiding points for the members because the problems relating to our working connected with safe runningof train services are mostly complicated.

(vi) This Association is also requesting the Chairman of the Committee to provide the delegation of our Association with another chance for oral evidence.

With regards,

Yours faithfully,

(S.K. DHAR)
Secretary General.

ANNEXURE 'A'

Important points recorded at a meeting of Corporate Enterprise Group held on 17.2.82, Presided over byM.R.

C.R.B. inviting the discussion indicated that in the Productivity year, Railways will be called upon to support the economy in a big way and prevention of accidents is a prime factor which will have to be laid emphasis on, without which it will be difficult to pull up productivity.

M.R.emphasised the special attention to be paid to prevent accidents both by minimising human failures and by improving the maintenance of the equipment.

M.S.R.directed the speakers to suggest measures short term as well long-term keeping in view the financial constrainst which he said, will have to be put up with.

(A) General Items :

1. A large number of accidents are stated to beattributable to human failure, the definition of which needs to be reconsidered keeping in view the circumstances and the constraints. Certain human failures are beyond the control of men. Human approach should be adopted in dealing with staff defaults.

2. Safety is a sum total of the effort of men, machines and rules, Too much of stress on human element is not desirable. It may create fear psychosis as by andlarge railwaymen are conscientious and hardworking.

3. Odds to the staff in discharging their duties efficiently like track-circuiting axle counters, interlocking, ultrasonic flaw detectors, etc. are inadequate. There should be a definite assessment of the extent to which these have been provided and positive plans should be drawn up for provision of these facilities in future.

4. Investment in railways has not been commensurate with the growth of traffic.

5. Enough funds are not being provided forultilising even the installed capacity.

6. Railway Ministry should convince Planning Commission and the Government about the need for more funds.

7. Implementation of recommendations of Accident Inquiry Committees is inadequate.
A large number of accepted recommendations ofKunzroand Wanchoo Committees have not been implimented eg.,

   a) Safety Officers have not been relieved of allother jobs; and
   b) Vacancies in operational categories continue to exist and adequate leave reserve is not available. Unqualified staff are beingutilised on train passing duties.

8. Whatever is pertinent to the safety has been said by the Railway Accident Inquiry Committees, what is needed now is the implementation thereof.

9. Board's Safety Team has highlighted certain real problems and deficiencies which should be circulated and should form basis of future talks at various levels.

10. Incidence of train accidents per million train kilometers has shown considerable improvement over the last two decades. We need not condemn ourself unnecessarily.

11. Formally, railway staff were provided free accommodation, leave Reserve staff going on temporary transfers were therefore, made available part of the accommodation. Which helped in staff taking ad-quate rest perore coming on duty; now they have to travel up and down for long distances to perform relieving duties.

12. Staff are not supplied touches, cells, etc. and trains are worked without tail lamps.

13. There are nofacilities at road side stations for medical treatment and education. Hence staff have to keep their families away and have torun up and down. As such they work under rest.

14. People working under fear are a safety hazard. Periodical meetings should be conducted to find out their difficulties and a sense of belonging should be generated in the staff.

15. Recruitment ofGrade 'A' Fireman should be revived.

16. Drivers andFiremen Instructors should be provided for each shed.

17. Theft of fitting both rolling stock and permanent way is a great safety hazard.

(B) <u>ITEMS pertaining to running staff</u>:

1. Time tabling leave no time for making up.

2. Facilities at running rooms do not provide congenial atmosphere for adequate rest. First 3 to 4 hours of the rest are spent in getting the meals prepared and taking meals etc., and the balance time for rest is not adequate.

3. On account of late running minimum rest at heatquarters and out-station gets curtailed.

4. There are conflicting subsidiary rules and subsidiary rules violate General Rules e.g.

   a) Drivers should not take out a defective loco but if disobeys the Loco Foreman, he is taken up,
   b) The driver is required to examine brake power at the first opportunity, but it is not allowed time todo or compelled to work with the same loco.

5. Duty hours for the purpose of over hours are counted from the time train starts, which is incorrect. At Jacsalgaon station on Centrail Railway, a collision had taken place on 25.6.81 where the driver was on duty for 18hours. Bhusaval Division of Central Railway, have issued impracticable order regarding over hours to be permitted upto 13 hours in day and 15 hours during night.

6. Mail/Express links are defective, viz. driver working all the 30 days of the month. Outstation rest for Jhelumn Express at Itarsi is only four hours.

7. Bhusaval Division 30% of the trains run during night time as a result the drivers have to perform continuous night duty.

8. Periodic rest should be 24+16 hours to permit drivers to pay attention to their personal/social problems.

9. Drivers are harassed in case they lose time during forgy wheather etc.

10. Staff are pressurised torun goods trains ignoring safety rules.

11. Normal speed marginof 10% between booked and maximum speed has not been provided on Madras-Trivandrum Mail.

12. Time allowance for looping mail/express trains is not provided.

13. At the time of change of duty of goods trains drivers, no remark is made regarding brake power.

14. There is a serious menace of trespassing on suburban sections. If motormen are not in a position to stop trains motormen and guards are assaulted by the mob.

15. It is not possible to maintain A-1 medical standard all through the life..

16. When alarm chain is pulled, there is heavy noise in themotorman cab as such guard's beats cannot be heard.

17. Brake test shouldmbe streamlined.

18. There should be wireless communication between the EMU trains or flasher lights should be used instead rules of protection.

19. Guards and motormen should bejointly responsibl for giving the signal and starting of a train.

20. Working schedule of motermen is tighter as the vacancies are not being filled up.

21. Subarban working should becategorised as intensiv.,as motorman has to encounter a stopsignal every 30 seconds and an assistant to moterman should be provided.

22. On long trains guards cannot locate signals.

(C) <u>Items pertaining to rolling stock</u>:

1. Shortage of materials and spares is responsible for poor maintenance of the rolling stock.

2. Brake power is poor and trains are goingfrom Dibrugarh Jn. Jodhpur withoutanyexamination. No examination is being carried out on through trains. At least rolling in examination and rolling of box should be carriedout. Yar Master on Southern Railway have been issued instructions to not accept memo from driver/guard.

3. Steam locos also do not have brakes. More than 50%of the speedometers are not working or are working unsatisfactorily.

4. Repair allowance of coaching stock is notadequate.

5. Alarm chains on suburban trains are not working.

6. Dead man's handles do not work.

7. Tail lights ofEMU rakeson C.R.are not lift for want of batteries.

8. Head lights of EMU's C.R. not focused properly.

9. Inferior quality of brake blocks are used on EMU. 60 KMPH speed restrictions had to be imposed on account of poor brake power, which as raised to 72 KMPH.

10. On Eastern Railway 4 to 5 motors only work against 8 traction motors provided.

11. Serious deterioration has taken place in rolling stock on account of deficiencies of spares. Cannibalisationis being resorted to in the yards to enable the outgoing trains to leave.

12. Hand brakes of wagons not working.

13. Recommendations ofRAI-CS with regard to C&W not implemented viz.

a) Time and staff required for train examination not being provided.
b) Andal pattern of train examination not adopted and
c) Repairs stock on nominated trains in traffic yards being carried out and facilities not provided.

14. Recommendations of the study of facilities for sick lines and sick line organisation committee 1973 not implemented.

15. A number of important mail/express takes are being maintained on non-pit lines at DLI.

16. Box wagons bearing springs are broken due to 5 tonnes over loading.

17. POL Loads (939 series) ex-shakurbasti and food grain, loads ex-Firozpur and double headed goods trains not given any intensive examination.

18. No progress has been made in adopting hot box detetors developed by RDSO.

19. ROH has been introduced at number of places without facilities of dust-proof rooms.etc.

20. Slack adjusters should beattended to in the sicklines.

21. Instructions regarding lifting of coaches have also been issued without creating facilities their for.

22. New trains are being introduced without adding facilities viz. washing lines, staff, materials etc.

23. Clash of interest between stores and maintenance, In stores Department staff are given awards for non-compliance of demands of maintenance departments.

24. There is inadequate lighting in the yards.

25. Training facilitiesfor the C & W staff are inadequate.

36. Condition of brakevans very unsatisfactory.

27. Vacum guages supplied to guards do not fit the vacuum pipe.

(D) Items pertaining to S & T.

1. 50% of the signals are not lit and drivers are taken up if they loose time.

2. Warning boards not been provided at uniform distances.

3. Leavers of the distant signals are very hard, as a result the cabinmen are disinclimed to pullthem.

4. There should be uniform signaling on a section.

5. Privatelights interfere signal visibility.

6. Minimum sighting distances not adequate.

7. A large number of signals bob in suburban sections

8. S & T Staff adopt shortcut methods, sometimes under pressure. No effective check made on the relay rooms.

9. Drivers/Motormen are pressuriesed not to report conflicting signals.

10. Motormen are pressurised to pass defective signals without written authority.

11. Electrical lighting of distant signals should be done.

12. Half circuiting ofstationlights should be done to improve visibility of signals.

13. At dual guage station locationof signals is conflicting.

14. Points and signals are not maintained properly and matrial is not supplied.

15. Repair allowance for S & T works not provided intime tables.

16. Track-circulating should be accelerated andautomatic warning system introduced.

17. Electronical Interlocking is superior to mechanical interlocking.

(E). Items pertaining to Permanent way :

1. Large lengths of MG track due renewals.

2. Supply of P.Way materials inadequate.

3. Year resistant points and crossings should be used.

4. Progress of welding is slow on account of shortage of electrodes.

5. Workload of establishment and stores does not permit PEI's to pay adequate attention to inspections.

6. Existing gang strength inadequate as per mufling formula.

7. There is no trainse reserve in the cadre of PWI.

8. There should be direct recruitment at the level of PE magtries.

9. Certain PWI's belonging to SC and ST having been given accelarated promotion, have to beposted on heavy densityroutes, but they are not in a position to work properly. Higher graded posts should be made floating so that people with adequate experience are posted at more important places.

10. Gang Man, key man and Mate must be given training.

11. Adequate blocks should be available for welding and dip lorrying the materials.

12. A cut point or a catch siding should be provided at RailJn.

(F) Operating Items:

1. Staff strength of shunt men has been reduced from three Shuntmen to two shuntmen per shungint engine and it is not possible to work with longer loads like JUMBOS & PYTHONS.

2. Guards are pressurised to start the trains without closing the doors and tightening of couplings.

3. STAFF CONNECTED WITH TRAIN PASSING SHOULD NOT DO DUTY MORE THAN 9 HRS DUTY IN DAY AND 6 HRS DURING NIGHT.

4. Itarsi Cabinman was pressurised to start a good train to meet interchanging commitment in the face of 6 up mail resulting in collision there.

No.82/Safety -I/13/2

Copy to : CTSS.

(Sd/-) P.C.SHARMA
Joint Director(Safety) I Railway Board
New Delhi-11.2.1982.

be provided to Electrical Staff for this purpose.

23. For one month, from 16th September to 15th October a special drive will be initiated on all Railways to conduct joint root plate inspections and take remedial action for proper sighting of signals. This period will be observed as the Signal Sighting Month on the Railways. The entire Railways should be covered during this period of each System.

24. There should be no arrears inothe overhauling of cabins Teams should be formed for this purpose including traffic staff like ASM/Guard and these should move from one place to another for carrying out the work so that the work can be expedited.

Copyof Railway Board's letter No. 81/Safety-1/30/5 dated 11.9.198 to GM/All Indian Government Railways and copy of DG/RDSO/ Lucknow and others.

Ten opiesof the Record Note of Discssions held by CRB with General Managers and HODs of Southern and South Central Railways at Madras on 6.9.1981 in regard to safety are enclosed.

Necessary action, as indicated therein, may please be taken and report sent to this office at an early date.

In the meantime, please acknowledge receipt of this letter.

Sd/-
Jt Director Safety (I), Rly.Board

ANNEXURE 'C'

ALL INDIA LOCO RUNNING STAFF ASSOCIATION
REGD/ NO.38/NAT

H/Q ANARA

Dated 15th Feb.1982

The following press Statement issued by Shri S.K.Dhar, Secretary General of All India Loco Running Staff Association

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Our attention have been drawn to the statement of Minister for Railways appeared in Delhi Press on 9th Feb.1982. The Statement carried two vital points - One for the death of 590 persons in train accidents in 1981, the Railwaymen are responsible for the death of 520 persons. Secondly he proposed to intensity the medical examination of drivers and other categories of Railwaymen connected with the train operation, as a preventive measure of accident.

This association being the organisation of Loco Running Staff which includes drivers and other foot plate staff, is bound to oppose such un-realistic and unwaranted comment of the Minister for Railways. Going by this statement it would appear as if the medical examination of drivers is very much flexible for which the accident have taken place. But in reality it is far away from the real picture. The Loco Running Staff have to passed 'A' medical examination (which includes eyes sight and physical fitness) as like as Pilot officer in Indian Air lines and AIR India is the highest form of medical examination. Normally the

ANNEXURE 'B'

RECORD NOTE OF DISCUSSIONS HELD BY CRB, GMs AND HODs OF SOUTHERN AND SOUTH CENTRAL RAILWAYS AT MADRAS ON 6.9.1981 IN REGARD TO SAFETY

CRB mentioned that, of late, all the good work done in freight movement surpassing the previous performance by a substantial margin was being clouded by the increase in accidents, particularly involving Mail/Express and Passenger trains. Tracing the background for the increase in accidents, CRB pointed out that the erosion in discipline during the past few years among staff was the major cause for the present state of affairs. The prime task of the Administration is to build up safety consciousness and restore discipline among staff.

2. Laxity on the part of different categories of staff was particularly discernible on different Railways e.g. Carriage & Wagon staff on Eastern Railway Loco running staff on South Eastern Railway and Station Masters on Southern Railway.

3. CRB referred to the observations of the Safety Team sent by the Railway Board. A few instances of indisciplined irresponsible working of staff, were cited; working of Dip Lorry on Northern Railway without any authority and without any protection, reluctance on the part of an Asstt. Engineer to accept the track defect until another derailment occured at the same place within a weeks' time, a cabinman not being available in the Cabin within 15 minutes of his joining duty and collision on South Central Railway due to reverse of points after the section was blocked and receiption signals cleared. There was this case of a derailment of BOXs in Chakradharpur Division on South Eastern Railway and culprit wagon having underground ROH at Jolarpettai only a few days earlier; then the collision of Island Express with a goods trains at Jolarpettai, Driver of the goods train involved in an accident recently being on duty for more than 24 hours and Doon Express entering the wrong line and travelling for three block stations on Western Railway.

4. It is imperative that corrective action is taken in different areas.

4.1 CTSSs should critically review the punishments imposed on staff responsible for accidents at the Divisional level and take necessary action to have the penalty enhanced, where necessary. When any glaring cases of inadequate punishments imposed by the officers at lower levels are noticed, they should be speciafically brought to the notice of the General Manager and a separate Note recorded immediately and filed in the Officers' Confidential Report. CTSSs should act as referees in adjudging the adequacy of punishments imposed.

4.2 Instructions should be reiterated to the staff that as soon a roller bearing defect is noticed, the train must be stopped forth with to proceed cautiously to the next station where the defective wagon should be detached.

4.3 Arrears in ROH/RB must be eliminated as they are potential safety hazards.

4.4 Any delay in finalisation of accident enquiry proceedings must be viewed seriously by GMs. The cases should be finalised expeditiously without parachial or departmental approach.

4.5 Drivers should be properly educated about the user of flasher lights.

4.6 Legal opinion should be obtained regarding applicability of 14(ii) in serious cases of either indiscipline or failure Alternatively inter-divisional transfer should be considered with immediate implementation, charge sheet being issued at the new stations.

4.7 Drunkenness among staff on duty should be put down with a firm hand. CSO should be fully associate and intelligence reports obtained about the accidents.

4.8 Inter-railway safety checks will be organised paring the railways as follows:

Southern and South Central Railways.
Eastern and South Eastern Railways
Central and Watern Railways.
Northern & N.E.Railways.

5. COPSs/Southern and South Central Railways will tie-up the close-circuit movement of bogie stock on M.G. network. Bogies stock should be segregated from four wheelers as far as possible. This will also ensure greater degree of safety. For the movement of thes B.G. rakes, Southern and South Central Railways will be treated as one sector and circuits identified for inter-railway movement of these rakes.

6. A rake with 17 coaches should be formed for Tamil-Nadu Express immediately to run single head.

7 For the detection of roller bearing defects, expeditious action is to be taken for procurement of more pulsers for all R.O.H. depots.

8. Reclamation of CBS coupler components should be organised in specified Railway Workshops or handed over to to trade, depending on the circumstances.

9. Check on the quality of brake gear fittings should be intensified.

9.1 Firms from which suppliesare not upto the standard must be blacklisted. CRSE will intimate the stores Department of reliable suppliers from whom these components canbe purch sed Developmental efforts should be continued to tap new sources, besides the existing firms.

9.2 Similar action should be taken up by the Engineering Deptt. regarding procurement of P. way materials.

9.3 Acceptance of rubber components must be critically viewed instead of going merely by RDSO's advice.

10. The short supply of roller bearing components from NEI should be taken up and simultaneously alternative sources explored.

11. Action to provide modified springs for BOX wagons needs be expedited as supplied against Railway Board's order are yet to be received.

12. Southern Railway is experiencing difficulty for CBC components in connection with the manufacture of BOXN. One of the closed steam locosheds should be set apart from manufacture and reclamation of CBC components by providing the requisite smithly shop andwelding facilities.

13. Mail/Express locomotives should be utilised to run coaching trains preferably, during their lie-over period. In case such coaching trains are not available, they will be used for running freight trains/pilots.

14. Specific emphasis should be laid on proper maintenance of jumbo rakes as they are being intensively utilised.

15. Adequate anti-pilferage and anti-sabotage measures like welding of keys, binding of keys tie rods etc.should be taken by all Railways.

16. An intensive drive should be initiated for apprehending the receivers of stolen property and provisions of RPUP and NSA increasingly used, where justified.

17. In order to tackles track formationproblems, possibility of layingdiversions should be examined, so as to overcome the need for traffic blocks on heavily congested routes and large scale expenditure in engaging labour for short durations.

18. Southern Railways has tried with provision of check rails ahead of points taking off curves in some of the major yards like Shoranpur and Arokkonam, which has helped in reducing derailments. Adoption of this practice on all Railways where considered desirable.

19. Provision of vertical curves in sags has been done on South Central and Southern Railways & this has also helped reduce derailments, particularly on Mysore Division on M.G. Similar measures may be adopted on other Railways.

20. South Central Railway has provided check rails for 60 Curves on M.G. This can be considered for regular adoption elsewhere too.

21. Senior Supervisors even if they are office bearers of Unions - should be taken up and steps including inter-divisional transfer adopted under extant instructions if their work is likely to endanger safety.

22. Trees which interfere with OHE equipment should be cut and removed by staff of Electrical Department without depending on Engineering Department. Necessary tools and equipment should

be provided to Electrical Staff for this purpose.

23. For one month, from 16th September to 15th October a Special drive will be initiated on all Railways to conduct joint root plate inspection and take remedial action for proper sighting of signals. This period will be observed as the Signal Sighting month on the Railways. The entire Railways should be covered during this period of each system.

24. There should be no arrears in the overhauling of cabins. Teams should be formed for this purpose including traffic staff like ASM/Guard and these should move from one place to another for carrying out the work so that the work can be expedited.

Copy of Railway Board's letter No.81/Safety-1/30/5 dated 11.9.81 to GM/All Indian Government Railways and copy of DG/RDSO/ Lucknow and others.

Ten copies of the Record Note of Decisions held by CRB with General Managers and HODs of Southern and South Central Railways at Madras on 6.9.1981 in regard to safety are enclosed.

Necessary action, as indicated therein, may please be taken and report sent to this office at an early date.

In the meantime, please acknowledge receipt of this letter.

Sd/-
Jt. Director Safety (I)Rly.Board

Staff have to appear once in three years upto the age of 45 years and beyond provided they passed without glass. The staff, who attained 45 years and beyond and the staff passed with glass irrespective of their age have to appear for medical examination once in a year. Apart IN CASE of any accident, passing of danger signal, derailment etc. irrespective of their responsibility have to appear for the special medical examination and they are not allowed to their work till they passed inthe examination. The other railwaymen connected with the train operation have to pass A2 medical examination according to their working condition and resposibilities are involved. In both the cases the examination are being done regularly on the basis of medical manual, What more else medical examination the Minister for Railway mean is not at all clear. This type of statement of a responsible Minister is aimed to shield the faults of the Railway administration and to malign the Loco Running Staff in particlar and the Railwaymen in general and to divert the attention of the Public from the real cause of accident.

The other point of statement, is a calculative attack on theRailwaymen because such charges are never been proved by holding a free and fair enquiry. The staff are being made scape goat by the juglery of so called enquiry of the administration. In any accident the real representative of organised labour involved in the accident are not allowed to witness. Even the demand of organised labour for public enquiry prove into the disastrous accident like Bagmati, Vaniam body etc. have been ruled out and the Railway administration unilaterally held the enquiry and fixed the workers responsible and punished them. In case of accident at Agra, the enquiry committee was set up by the Railway administration but before the enquiry was processed, the Minister for Railway came out with a statement that the driver is responsible for passing signal at danger and met the accident and biast the proceeding of the enquiry, But if we, take it guaranteed that the driver hasspassed the signal at danger, there are many other causes like failure of brake power and defect in rolling stock etc. may cause the train to pass the signal and met the accident.

Coming to the question of Safety of the Railway in train operation the Railway is having a safety department which vertually made inactive, specially after Shri Gujral being the Chairman of theRailway Board. The safe working rules are drastically violated on the direction of Railway Board. The safety department remained as silent spectator and did not take any step in case of any complain about violation of safety by the administration. Rather they have been deputed to work as Referee to increase the punishment in case of minor punishment is served.

On the other hand, in the name of to ensure more running of trains all the safety measures have been violated (i) All the intermediate carriage checking station have been withdrawn (ii) Trains are forced to run with inadequate power brake. (iii) Thorough checking of e rolling stock every after 380 KM has been withdrawn and checkingare being

done after completion of 1200 KM to 1500 KM (iv) Trains are being worked without Guard and without brake van (v) Staff are being forced to work any number of hours which usually exceed 15/20 hours at a stretch (vi) Staff are being forced to work under rest, (vii) Staff are being forced to officiate on higher grade though he is not fit for the post he is to officiate (viii) staff are being forced to work on the engine without maintenance (ix) Track and other rolling stock are also not maintaining.

In fact there is no rule and system of work. All have to work on the whism of the administration whatever may be the consequence there. The staff are being penalised in case they refused to avide by all the illegal and unsafe working orders. The last agitation of Loco Running Staff Association on all India basis was the resistance of introduction of such working condition which was ruthlessly suppressed by the administration and Central Government as well.

Still such repressions are continuing on us. So we appeal to the travelling public and other democratic masses of the country not to be confused by the statement of Minister and to stand by our cause and cause of the travellingpublic. If we joined together we will be able to defeat such motivated atrocities and safeguard our right.

ANNEXURE 'D'

AN ACCIDENT A DAY?

It was barely a fortnight ago that we drew attention to the public anxiety over the increasing number of train disasters, following the Mehsana Mishap in which 31 people were killed and the toll of 48 lives in the tragedy in Bilaspur division. Since then railway accidents have been occurring with sickening regularity. The latest in the recent chain of major accidents, which opened with the dreadful disaster on the Bagmati river, is the derailment of the Puri Express, again over bridge. Fortunately, no lives were lost. It might have been a different story if a derailed coach which titled dangerously over the bridge had fallen into the river, as happened on the Bagmati.

This is bad enough but the railway authorities explanations add to the public concern. In several cases of accidents they have alleged sabotage, After the mishap to the Puri Express also the S.E. Rly. promptly came out with a statement that it was 'prima-facie' suspected to be a case of sabotage'. If so many cases of foul play are happening on the Indian Railways, it is a serious matter. What is theGovernment doing about it?

There are however, reasons to suspect that the sabotage theory is being used, at least partly to cover up certain weaknesses in the railway system itself. Vast stretches of the track and many railway bridges are in a state of disrepair. Engines and coaches in a rundown condition continue to be used. Failure in signalling and breaking systems are often reported. On July 24, several groups of railwaymen, jointly demanded a thorough probe into the spate of accidents. They claimed that they could prove that most of these mishaps were caused by the wrong policies of the administration. Among the operational faults they specified were the continued use of absolete equipment, non availability f essential material and deliberate violation of safety norms. If this is indeed the situation, the Government is taking a risk with the lives of millions of passengers, which will be compounded by the Railway Board's plans for bigger and faster trains.

The Indian Express
New Delhi, August 3, 1981.

ANNEXURE 'E'

The Times of India
Friday July 31, 1981.

Railways Under Stress.

The derailment of a passenger train at Patna which has already claimed three lives in the eleventh major accident in the last seven weeks. Taken together these accidents reveal a clear underlying pattern that the railways, the Central Govt. and the planning can ignore only at the nations peril nine out of the eleven accidents have been caused by bogies and wagons jumping off the rails, leading to the inevitable suspicion that the track was weak. This suspicion is strengthened by the fact that five of these nine disasters involved passenger trains, which travel much faster than goods train and are therefore, more likely to cause failures of the track. To clinch the issue, four of the five passengers trains were short distance train which are inevitably heavily overcrowded. (The Samastipur-Danamukhi Pass that plunged into the Bagmati was reportedly carrying over 300 persons when it had space for only 249) The additional weight undoubtedly hastened the failures of the track. Clearly a dangerous situation now exists, because the bulk of the railway track is overaged, poorly maintained and therefore unstable particularly after torrential rains. Nor are the bridges in any better shape. The Sikri Committee pointed out that the number of such bridges had trabled from 1247 to 3533 in a decade. Much of the failure of the braking system are frequent. Indeed this may well be the underlying reason for the Bagmati disaster.

All this steam from a single root cause. The Government has consistently under invested in the railways ever since the plan holiday of 1966-69. In fact it has starred them so badly of funds that even the provisions for depreciation expressed as a ratio of the current replacement cost of capital assets has declined from a pitiful 1.7 per cent in 1967-68 to a token 0.9 per cent in 1978-79. Nor is there any likelihood of an improvement in railway financing during the current plan period. The allocation for the railway of Rs. 5100 crores is no where near enough to make good even the erosion of capital asse s that they have suffered in the last sixteen years. To make matter worse they are not being allowed to generate their own resources because the movement of coal, steel, fertilizers and food on the one hand and second class and comuter travel on the other continue to be heavily subsidised. Against this background the railway board's determination to break all records in goods movement and to introduce 7500 tonnes goods train in place of the 2500 tonnes trains of today although praisworthy in every other respect cannot but cause a shiver of apprehension for the safety of rail users.

ANNEXURE 'F'

HINDUSTAN TIMES

SATURDAY AUGUST 8, 1981

PERILS OF THE TRACK:

The Railway Minister Mr Kedar Pandey could hardly feature have-chosen a worse time for his glib announcement that theRajdhani Express's speed will be increased apart from last month's still unexplained Bagmati disaster, there have been three major accidents recently and a collision at an unmanned level crossing all of which induced the hope that the Minister would be more concerned about the observance of basis safety regulation than with new fangled experiments. Safety is particularly relevant because for the Ahmedabad bound Delhi Mail's mishap was said to be the unusually highspeed at which it was travelling, apparently tomake up for the lost time, though the preliminary official explanation claimed sabotage, complaining that two fish plates had been removed . The accident at Patna Station was also similarly explained (two fish plates were later found by the track, but a more convincing reason might emerge after proper investigation, Meanwhile the Railway Ministry would be well advised to desist from trying out anything new, its aim should now be to review the entir system's working so as to restore public confidence which has been badly shaken not only by recurring accidents but also by an increasing spate of crime. The feeling is growing that in their obsession with achieving freight targets, the railways tend to ignore theproblems of passengers who account for only 35 per cent of earnings. The deplorable neglect of ordinary safety measure in a feature of this bias.

The problem is not new. According to the Sikri Committee only 12 per cent of the Originating trains at checked had the requisite braking power prescribed by the railway board and what is worse this percentage dropped to only one in the case if Terminating trains. The committee came to the obvious conclusion that conditions were simplyallowed to deteriorate while trains were on the track w there must be railway staff supposed to check brakes but apparently they donot attend to their duties. It is no wonder than that of the 1:013 accidents in 1980-81. 498 were due to what was officially described as human error but probably amounted to negligence encouraged by poor supervision. Another 304 accidents were said to have been caused by mechanical failure and 43 by track failure, both presumably due to poor maintenance.. That most of the equipment used is an urgent need of the replacement has long been evident; the Sikri Committee had come harsh things to say about railways working. It also observed that over thelast decade the number of distressed bridges had gone up from 1247 to 3553. Not only does this indicate that safety measures rank low in the administrations priorities but also suggests that not all mishaps are accidents in the distionary meaning of the word. Most are due to a callous disregard for the lives entrusted to railways.

LOK SABHA SECRETARIAT
(Committee Branch-II)

JOINT COMMITTEE ON THE RAILWAYS BILL, 1986.

Statement showing comments/suggestions received from MPs/State Governments/ individuals/Associations/Bar Councils/ Bar Associations etc.

S.No.	Memoranda received from	Memo No.
1.	The Chamber of Commerce, Vizianagaram (A.P.	19
2.	Cement Manufacturers Association, New Delhi-110008.	20
3.	Shri Murlidhar C. Bhandare, M.P., C-109, N.D.S.E. Part-II, New Delhi.	21

CONFIDENTIAL

LOK SABHA SECRETARIAT
(Committee Branch-II)

...

JOINT COMMITTEE ON THE RAILWAYS BILL, 1986.

MEMORANDUM NO. 19

[Comments/suggestions received from the Chamber of Commerce, Vulli Veedhi, Vizianagaram (A.P.)]

We understand from Press Reports that Government is proposing an Amendment to the Railway Act empowering the authorities in charge Reservation of Tickets to the Public to cancel prior reservation according to them at their discretion without notice on a prevailing situation. Presuambly the Amendment was sought to be made in view of a recent Court judgement asking the Railways to pay compensation for cancellation of reservation in respect of a certain individual indiscriminately.

We submit that in case the amendment is made it will be great blow to the travelling public and also an encroachment on their right to obtain reservation. The very object of reservation will be vitiated. According to the present rules one has to obtain reservation several months before his intended journey, to be sure and secure of his berth. People do not apply to reservation for pleasure, and they do it after careful planning of their journey. Reservation is intended to have a safe and comfortable journey. Now a days duo to increase of passenger traffic none can step into a train without reservation. Reservation is absolutely necessary for old, sick and disabled people and women. People obtain reservation generally for attending marriages, pilgrimage and medical check up. They have to attend invariably on the dates fixed. Otherwise no useful purpose will be served. If the proposed legislation is made they will be frustrated. Besides these some of the public belonging to trade and other organisations have to attend meetings connected either by Government or State Associations punctually on the fixed date they will obtain advance reservation to ensure participation promptly.

...2/-

. In view of the above circumstances we request the Honourable Prime Minister/Railway Minister to reconsider and drop the proposal initiated, if any to safeguard the interests of the travelling public. In case Government opines that the railways are monetarily effected by way of monetary compensation awarded due to the negligence of the Railway staff with regard to cancellation of reservation, suitable guidelines may be issued to the authorities for ensuring reservation to the persons who obtained prior reservation, and to take disciplinary action against the concerned in case of failure. If the authorities are allowed to cancel reservation at their discretion, there will be ample scope for corruption ultimately leading to loss of revenue to the railways.

CONFIDENTIAL

LOK SABHA SECRETARIAT
(Committee Branch-II)

...

JOINT COMMITTEE ON THE RAILWAYS BILL, 1986.

MEMORANDUM NO. 21

[Comments/suggestions received from Shri Murlidhar C. Bhandare, M.P.]

I. Section 5, Chapter III deals with Commissions of Railway Safety.

Section 5 provides for appointment of Chief Commissioner of Railway Safety and Commissioners of Railway Safety. However, I find there are no guidelines or qualifications laid down for the office of the Chief Commissioner or the Commissioner of Railway Safety. These qualifications and guidelines may suitably be provided.

II. Under Section 42 of the Indian Railways Act 1890, the Central Government alone shall have power (a) to classify or re-classify any commodity; (b) to increase or reduce the level of class rates and other charges.

The word 'alone' is significantly absent from section 29 of the Bill, which replaces section 42. Possible view of this may be that the Railway Rate Tribunal may reduce these rates which I feel is not contemplated while enacting the new Bill.

III. Section 31(4) provides Chairman and the other members of the Tribunal to hold office for such period not exceeding 5 years as may be prescribed. Excepting on reaching the upper age of retirement, the Chairman and other members of the tribunal should have a fixed tenure of 5 years.

IV. Section 68 of the Bill provides that a railway administration shall not make or give any undue or unreasonable preference or advantage to, or in favour of, any particular person or any particular description of traffic in the carriage of goods. This provision substitutes section 28 of the present Act.

...2/-

Section 28 includes further the provision that a railway administration shall not subject any particular person or railway administration or any particular description of traffic to any undue or unreasonable prejudice or disadvantage in any respect whatsoever.

I am of the opinion that the new Railway Bill should contain both the aspects positive and the negative against preferential, fair, discriminatory or unfair treatment.

V. Whereas section 72 of the Bill provides for passing of the property in the consignment covered by a railway receipt to the consignee on the delivery of such railway receipt to him, section 73 does not affect the right of the consignor for stoppage of goods in transit as an unpaid vendor on his written request to the railway administration. I find that this is inconsistent and may render section 72 totally nugatory.

Joint Committee on the Railways Bill, 1986

Memorandum No 20

CEMENT MANUFACTURERS' ASSOCIATION

PRAGATI TOWER, 13TH FLOOR, 26, RAJENDRA PLACE NEW DELHI-110008
Phone : 5713206, 5710347 Cable : CEMENTASO Telex : 031-62230 CMA IN

SILVER JUBILEE 1961-1986

347/239/87

6 April 1987

Shri R.S. Mani,
Sr. Legislative Committee Officer,
Lok Sabha Secretariat,
(Committee Branch-II),
Parliament House Annexe,
NEW DELHI-110 001.

Dear Sir,

Sub: Joint Committee on the Railways Bill 1986.

We refer to your letter No. 6/4(1)/86/CII dated 7 January 1987 asking our comments/suggestions on the provisions of the Railways Bill 1986 for consideration by the Joint Committee of both Houses of Parliament and your letter of even number dated 18 February 1987 extending the time for submission of our comments on the bill.

2. Based on the comments and views received from some of our members, we enclose herewith a memorandum in respect of Clauses concerning Carriage of Goods and responsibility of Railways as Carriers, etc., which vitally affect this Industry

3. We also desire to give oral evidence before the Committee, if you permit. We, therefore, seek your permission for audience before the Committee.

4. Kindly let us know your decision well in advance so that we can inform our members accordingly.

Thanking you,

Yours faithfully,
For CEMENT MANUFACTURERS' ASSOCIATION

Sd/-

(V.M. RANGNEKAR)
DEPUTY SECRETARY

L/.

RAILWAY BILL 1986 - AN APPRAISAL

The Railway Bill 1986 seeks to replace the Indian Railway Act 1890 as amended from time to time. The bill, coached in simpler language is based more or less on the 1890 Act with a few new clauses. Also some rules from Railway's Goods and other Tariffs have been incorporated in the Bill to give statutory backing to these rules. The ostensible purpose of the changes is "re-orientate the law relating to working of our Railway system to make it responsive to current needs." A few useful clauses of the proposed bill apart, in certain areas having financial implications, the proposed changes reflect a monopolist's attitude towards customers totally dependant on the former's monopoly product. In some aspects relating to freight, the additions, alterations and deletions propose to divest the railway - a public utility undertaking - of their responsibility as national careers. In some cases, the bill seeks to place heavy financial burden on the industry. Some of these changes, far from being responsive to developing economy's needs and aspirations may operate to industry's and consumers's detriment.

2(i) The Railway Bill 1986 has 211 clauses. This appraisal is confined to a few important clauses which are likely to have repercussions on freight transportation and allied matters. However, the enclosed statement 'C' describes briefly with remarks, where necessary, these clauses of the Railway Bill 1986 with corresponding clauses of the Act of 1890 and Rules of Goods Tariff incorporated in the Bill 1986 which have bearing on freight transporation.

...2.

2(ii) Some clauses of the Railway Bill 1986 provide for departures from various rules contained in Railway Codes & Tariffs. It is presumed that the Ministry of Railway will recast the Codes & Tariffs to bring them in conformity with the changes, the Bill seeks to introduce.

CLAUSE 63
SUBCLAUSE(2): Subclause 63(2) seeks to eliminate an unsatisfactory feature of Goods Tariff Rule 115 which stipulates that Railway Receipt does not convey any admission regarding correctness of weight, classification or description and number of packages mentioned in Railway Receipt. In terms of the proposed clause, entries in Railway Receipt concerning items under reference will be taken as correct in case the railway staff make an endorsement in the Railway Receipt as to the correctness of these entries.

It is, however, presumed that legislation will ensure that in those cases (for example, Private Sidings) where staff are not able to count number of packages and thuse issue, "said to contain Railway Receipt", the certification will cover description or classification and at weigh-bridge equipped sidings/depots, the weight as well.

CLAUSE 64
SUBCLAUSE (5) & (6) Subclause 64 (5) seeks to empower the railway servant to detain goods for examination even in those cases where the consignor had given, as required under subclause 64(1), a statement giving description of goods for determining the rate. Subclause 64 (6) seeks to provide that expenditure in this connection will be borne by the consignee/

...3.

endorsee and railways will be absolved of the responsibility for damage, deterioration or loss consequent on this detention. The proposed subclause 64(6) will unnecessarily inflict hardship on consignee in those cases where examination may establish veracity of the consignor's statement. To avoid such hardships, Clause 64 should have subclause (7) on the same line as subclause 58(6) in the Indian Railway Act 1890. This subclause reads as under:-

"58(6) - If it appears that description of goods is not different from that stated in an account delivered under Sub-section (1), the Railway administration shall pay for detention and examination, and be responsible to the owner of the goods for any such loss as aforesaid."

CLAUSE-71: Briefly, this clause proposes:-

(i) Imposition of penalty freight on overloaded wagons.

(ii) Unloading of "excess" contents from overloaded wagons at the loading point/intermediate point.

(a) (i) The proviso in the proposed clause provides for unloading of "excess" at the loading point/intermediate point. The main clause authorises imposition of penalty freight. Thus between "reduction of excess contents" and "penalty freight", the latter is accorded weightage even though levy of penalty freight is only a preventive measure.

...4.

(ii) An overloaded wagon is a safety hazard and may endanger public safety. At the loading point, the railway staff supervise loading even when owners load wagons. Ministry of Railways General Rule 2(11) for train working has made it incumbent on the railway staff to make every exertion for ensuring safety of the public. In this context, Clause-71 of the Railway Bill 1986 be reworded to legislate that excess should be unloaded at the loading point or at the train formation point & to facilitate this the coal loading points or the train forming points should have weighbridges.

(b) If the Railway Bill 1986 is modified to provide for course of action indicated in subpara (a-ii) above, the need for punitive action indicated in Clause-71 should not arise in which case the punitive portion of this clause may be deleted. However, if it is considered necessary to provide for "penalty" with a view to providing a deterrent against overloading, the levy of penalty be included as a proviso and should provide for the realisation of penal freight from the consignor who overloads wagons and the zonal railway which clears over-loaded wagons. It is a common knowledge that consignee/endorsee is not at all in the picture during wagon loading and in this context, to provide for levy of penalty freight - four to five times the normal freight on the consignee/ endorsee is unfair, unjust and against the principles of Natural Justice.

...5.

Annexure A is a case study which shows financial implications of penal freight in respect of coal wagons received by ACC's Works at Kymore, Wadi and Bhupendra (near Chandigarh).

CLAUSE-77 SUBCLAUSE (1) Goods Tariff Rule 118 has been incorporated as subclause 77(1) to give this rule the force of law. However chance of acceptance of consignee's request for weightment has been rendered remote by prescribing various nebulous situations under which local railway officials may not entertain the request. Thus even when consignee may be prepared to pay charges prescribed for weighment, railway officials on the spot may turn down the request on grounds,"yard congestion", "difficult operating conditions", "consignment booked under owner's risk" or "perishable with chance to lose weight in transit". The railway administration have not defined "yard conditions" &"difficult operating conditions". The grounds for rejection of requests are vague and defy limit.

(2) It is noteworthy that whereas clause 76 of the Railway Bill 1986, seeks to vest the railway administration with rights and powers to weigh any consignment before delivery, the customers are virtually denied the right to get their goods weighed before taking delivery.

(3) Circumstances under which request for weighment may be denied may prompt authorised officials to take recourse to the easier way of turning down even genuine requests. The Railway Bill 1986 may provide safeguards. Thus when consignee or endorsee requests

...6.

for weighment before delivery especially when sight checks show consignments like coal & iron billets having been pilfered, the railway administration should accept such a request irrespective of "yard" or "operating conditions" and without regard to whether the consignment is booked under "Owner's Risk" or is "perishable". Booking at Owner's risk d not mean that railways do not have any liability towards safe carriage of goods. Similarly application of proper and scientific methods can help to determine the extent of transit loss in case of perishable consignments.

(4) There is therefore urgent need to redraft this claus so as to delete reference to "yard congestion", "difficult operating conditions", "Owners Risk" and "Perishable consignment".

SUBCLAUSE (2): (a) This subclause will discourage even genuin consignee from asking for weighment. There should be no question of consignee having to pay demurrage for detention to wagons when consignee's worst fears are confirmed and consignment is found to have been pilfered while in railway custody.

(b) It is appreciated that the law should provide for deterrent against frivolous requests. Therefore demurrage for detention to stock may be levied when weightment result does not show loss or request for weightment was not made within a reasonable period of arrival of the consignment.

...7.

CLAUSE -79 The new clause seeks to make it obligatory on the part of Railways to grant open delivery when a consignment arrives in damaged condition or shows signs of having been tempered with while in railway custody. Hitherto open delivery was granted at "will" on basis of practices in vogue and at times the railway officials delayed or evaded the issue. The clause introduces a welcome departure in that it conceds to the consignee the right to request for and get open delivery.

CLAUSE-93 This clause seeks to absolve the railway administration of from responsibility for damage, deterioration or destruction of goods, which are normally carried in covered wagons but which, on written request from consignor, may actually be carried in open or defective wagons.

(2) The consignors of goods under reference always want covered wagons. However railway's pool of covered wagons is limited. It is not able to meet the demand. Due to chronic scarcity of these wagons, the railway officials invariably ask the Consignors to load open/defective wagons. Occasions do arise when railways even go to the extent of sending informal messages to the consignors that covered wagons may not be available for some time and that open/defective wagons only are available for the consignor to load and despatch his goods. Such situations arise during food grain and fertiliser loading peaks etc., and in such situations, the consignor faces choice between

...8.

(a) refusal to load consignment in open/defective wagons with consequent holding back of ready for despatch goods, curtailment/ stoppage of production and adverse reaction in or possible loss of market or;

(b) acceptance of open/defective wagons to maintain despatches and production with possibility of chance for damages to consignment during transit.

(3) : The consignor has to keep production going. He is thus forced to exercise choice in favour of loading of open/defective wagons. This is not a voluntary or willing exercise of choice. This hard choice is exercised under extreme duress.

(4) : The Railways, on their side, draw certain advantages. The open or defective wagons, which otherwise would have idled, are utilised for revenue earning traffic. This helps upliftment of higher tonnage and extra earning by way of freight. This benefits accrue to railways due to willing cooperation on part of industry and customers.

(5) : Thus loading of open wagons with goods which normally go in covered wagons is, in ample measure, a sign of willing cooperation between industry and railways. In larger prospective it is done in the interest of economy and serves national purpose.

...9.

(6) In the context of what is stated above, in case of consignments which suffer damage due to transportation in open/defective wagons, the Railway administration should be made liable to share the consignor's loss. After all, open or defective wagons are loaded when, instead of offering covered wagons, the railway request and even coerce the consignor to load open/ defective wagons. It is understood that Railways administration share with the Food Corporation of India, damage etc., suffered by foodgrains due to transportation in open/defective wagons on 50:50 basis. In accordance with the principle of equity and equality before law the railway administration should extend the benefit of sharing of loss to others as well. The Railway Bill 1986 requires suitable modification to provide for such sharing.

CLAUSE-94 (1): The new clause seeks to absolve the railway administrations of responsibility for loss, damage and deterioration etc., to consignments due to delay or detention in their carriage, inter alia, "for reasons beyond their control". The clause does not indicate whether it applies to "railway risk" in addition to "Owner's Risk" or to "Owner's risk" only. However, irrespective of this ambiguity, the reason "beyond its control", for disowning responsibility does not carry conviction. The term, "beyond its control" is all embracing; it may be used as a ploy to cover vast areas. Under its umbrella, the railway officials may be tempted to bid farewell to reasonable care and caution which railways are expected to exercise for safe

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custody and protection of goods in their charge.

(2): Delay in transit, amongst various reasons, may be due to congestion in yards or congestion over a particular route or due to enroute detachment of defective wagons. In such cases, the railways should regulate traffic and when necessary, divert the traffic via alternative routes. Similarly prompt attention be paid to repair and clear wagons marked sick. Failure to take quick action may inflate transit time and cause abnormal detentions. Again, liquidation of congestion may be prompt or may get delayed depending on the traits of local officials dealing with the situation. Whereas, the railway officials may take cover behind "reasons beyond control", it may be extremely difficult for the customer to find out facts to refute the railway's arguments. In the process, the customer may sustain heavy losses. To avoid losses on this account, the railway administration must be held responsible to ensure movement of goods within reasonable time and should account for delays. The provision, "for reasons beyond control" requires to be deleted.

Annexure 'B' is a case study of financial loss due to damage to cement consignments despatched in Box Wagons under Owner's Risk from ACC's Cement Works at Jamul to Shalimar and nearby points. Briefly, between December 1985 - June 1986 nearly 5% of cement despatched in Box Wagons was damaged; a loss of Rs 20.25 lakhs. In all these cases damages occured to cement in Box Wagon rakes and

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individual Box Wagons detached enroute which reached destination after abnormal delays.

CLAUSE-102: Under the Indian Railway Act 1890, the railway levy percentage charge on declared value of specified high value goods. Railways make special arrangements for safe custody and safe transportation of goods under reference. The railway's liability in case of loss or damage etc., of these goods is settled on basis of percentage charge paid and verified value. Clause 102 of the Railway Bill 1986 seeks to continue this procedure in case of goods under reference. In addition, this clause seeks to lay down procedure for determining railway's liability for loss or damage etc., in respect of all types of goods, irrespective of their value. Thus, when value of a consignment is declared and percentage charge, as may be prescribed, paid, railways liability will be determined on basis of declared value (subject to verification) of the consignment. In case the value is not declared, the amount of compensation will be paid at a prescribed rate on a weight slab as is done by Airways.

Reasons for introduction of the proposed procedure for payment of percentage charge on declared value of all consignments are not known. However, railways are not likely to make special arrangements, for safe custody and safe transportation of consignments accepted on basis of percentage charge. Two cement rakes, one with percentage charge paid on declared value and the other with value not declared will move out of loading

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point and run towards destination under almost identical conditions. In this context, there does not appear to be any justification for levy of percentage charge on declared value for the purpose of fixing railways liability in case of loss, damage or deterioration of consignments while in railways custody.

The proposed clause has not prescribed the percentage charge. It may find a mention in the rules. The percentage charge will be in addition to freight and the payable amount is likely to increase from time to time consequent on increase in value of the commodity and due to increase in the rate of percentage charge. Cement Industry despatches cement and receives coal and gypsum in rake loads. The value of those commodities is very high; cement fifteen lakhs, coal five lakhs, gypsum one lakh per rake of 1650 tonnes at current price level. Levy of percentage of value of consignments will impose a gruelling financial burden on industry without corresponding gains. The railway will not make any special arrangements for safe custody and safe transportation of commodities. However, the railway administration seeks to adopt the procedure as a back-door entry for revenue escalation. In the context of what is stated above, Clause 102 subclause (1) and (2) be deleted from Railway Bill 1986 and in case the Ministry of Railway wish to retain the same, these subclauses should not apply to consignments which are moved in rake loades and for which railways do not make nor will require special arrangement for safe custody and safe transportation.

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CLAUSE-104 SUBCLAUSE (3) CLAUSE-105 SUBCLAUSE (1)

Subclause 104 (3) seeks to stipulate that claim for refund of overcharges be lodged with the railway to which payment is originally made. Neither this subclause nor subclause 105 (1) indicate the railway against which suit for recovery of overcharges will have to be filed. However, in the spirit of subclause 105 (1), the suit for recovery of overcharge may have to be filed against the railway to which payment has been made.

Subclause 104(3) provides for significant departure from the extent procedure whereby refund claim can be lodged and suit also filed on either forwarding or intermediate or destination railway irrespective of the railway to which payment has been made. The proposed subclause will create difficult situations when payment is made by the consignor and the claims for refund is to be lodged and suit filed by the consignee/endorsee living far away. The consignee/ endorsee will be put to lot of inconvenience and travel expenses for follow up with Railways for settlement of claims and failing this for lodging of suits in Courts to get the case settled. The proposed subclause requires to be deleted and instead the proposed clause may provide for continuance of extent procedure for lodging of refund claims and for filling of suits against either the Forwarding or intermediate or destination railway.

Encl: Annexure 'A' & 'B' & 'C'

ANNEXURE 'A'

CASE STUDY - COAL OVERLOADING - PENAL FREIGHT

There is heavy incidence of Railway Receipts showing payload in Box Wagons in excess of the concerned wagons carrying capacity from Ranigang and Jharia Collieries of Eastern Coalfields. A quick scrutiny of Railway Receipts from loading points of Jharia and Ranigang has revealed that between 1st June and 6th August 1986, The Associated Cement Companies' Cement Works at Kymore, Wadi and Bhupendra(Surajpur near Chandigarh) received about 2400 tonnes of coal in excess of CC+2 in 399 Box Wagons for which railway raised penalty freight amounting to Rs.20 lakhs as against the freight of Rs. 3 lakhs at normal rate. The range of overloading is given as under:-

Period	Destination	Loading Point	NO.of Over-Loaded Wagons Received	Range of Overloading in Excess of CC+2	
				3 Tonnes	More than 3 Tonnes
	Wadi	Chapapur & Budjina	37	20	17
	Kymore	Andal,Bhanora Patherdihi Pandra, Pandaveshwar	332	92	240
	Bhupendra	Jemahari, Daburland, J.K. Nagar, Chusik, Kolladih, Sripur	30	11	19

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2. All Coal wagons were loaded by Colliery Staff under direct supervision of Railway Staff who also weighed the wagons on weighbridge before recording the payload of each Wagon on the relevant Railway Receipt. The survey referred to above revealed that some of the Box Wagons were overloaded by 11 to 18 tonnes ie., between 20% to 30% above the Box wagons carrying capacity + 2 tonnes.

3. There is another aspect. The extent of overloading over & above permissible carrying capacity has been found to be excessive and incredible. To verify correctness of the Railway Receipt weight, Bhupendra Cement Works carried out volumetric assessment of weight with results in four cases as under :-

Sr.	Box Wagon Number	Loading Point	RR.NO. & Date	Carrying Capacity + 2 Tonnes	R.R. Weight (Tonnes)	Volumetric Weighted at Bhupendra (Tonnes)
1.	SE 88897	Daburland	360878 of 10.7.86	56.0	73.7	55.2
2.	SE 106337	"	"	57.3	70.0	56.3
3.	CR 40383	"	"	56.7	68.0	56.0
4.	WR 72373	"	"	55.9	67.1	56.3

4. Volumetric weight at Bhupendra Cement Works and Railway Receipt weight at loading point may not always be the same. However variation cannot be as brought out above. Morever the weight on the Railway Receipt is a suspect. The ACC has strong reasons to suspect collusion between Colliery staff and Railway staff at loading point to show factitious payload in coal wagons. This is resulting in collieries being able to show higher tonnage produced and earnings from sale of coal never processed, railways

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ANNEXURE 'B'

ABNROMAL DETENTIONS & DAMAGES TO CEMENT CONSIGNMENTS JAMUL WORKS BHILAI - SHALIMAR ROUTE-DECEMBER 1985-JUNE 1986

- A CASE STUDY -

Between December 1985 - June 1986, Jamul Cement Works situated near Durg on S.E. Railway, loaded about 43.5 Thousand Tonnes of cement in Box Wagons at Owners Risk as covered wagons were not available. Box Rakes were consigned to Shalimar and the nearby places all situated within 860 Kms. About 2300 tonnes (i.e. about 5%; value 20.25 lakhs) arrived destinations in damaged condition (by wet).

2. Investigations showed that damages by wet were maximum in those caseswhere the rakes or individual box wagons suffered extra detention. The table below gives the position:-

(i) Transit time of Rakes without or with damages

No.of Box Rakes Despatched from Jamul	No.of Box Rakes Arrived		Transit particulars of Rakes Which Arrived with Damaged Cement						
	Without Damage	With Damage	Destination	Distance	Transit Time in Days				
					11	10	9	8	7
27	19	8	Shalimar	860	1	2	1	1	1
			Bankaura	745	-	-	-	-	1
			Kelikunda	730	-	-	-	-	1

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(ii) Transit time of individual box wagons detached enroute.

No.of Boxes in which did not reach on Mother Rakes	Breakup of Transit Time of Detached Box Wagons					
	41-62 days	31-40 days	25-30 days	20-24 days	15-19 days	14 days
39*	1	4	4	7	5	18

* Note Enroute detachments were 4.5% of Box Wagons detached between 1st December 1985 and June 30th 1986

3. It is not possible for customers to know where and why detentions took place. The railway will endeavour to cover their failure "reasons beyond their control". The case study high-light the need for making it incumbent on railways to take the goods to destination in reasonable transit time irrespective of whether the consignment is booked under "Owners Risk" or Railway Risk". Law should not provide the railway administration a convenient cover for shielding their inefficiencies at the cost of the custemer.

getting extra tonnage and freight for coal never transported and, on the otherhand, the consumer paying cost & freight including prohibitive penal freight for coal never received.

5. The position is unsatisfactory. Imposition of penalty freight on consignee is responsible for this situation. It can be remedied only by the law providing imposition of ban on clearance of overloaded wagons from loading points, insistence on reduction of the "excess" contents and on realisation of penal freight from consignors and zonal railway responsible for overloading.

ANNEXURE 'C'

STATEMENT SHOWING CLAUSES OF RAILWAY BILL 1986 & CORRESPONDING CLAUSES OF INDIAN RAILWAY ACT 1890 AND THOSE CLAUSES OF GOODS TARIFF WHICH ARE PROPOSED TO BE INCLUDED IN THE BILL 1986

1986 Bill Clause No.	1890 Act Clause	Goods Tariff Rule	Brief Description	Remarks
59	60	-	Maintain and exhibit rate books etc, for public reference	No Change
60(1) (2)	54(1) (2)		Prescribe Maintain and exhibit conditions for receiving, forwarding, carrying and delivery of goods. Risk .	No Change
61(1)	74(1)	177	RISK RATE: Railway Rate, where owner Rate not applicable.	No Change
(2)	"	-	In absence of option for Railway Risk Rate, where both RR/OR applicable OR will apply	No Change
62	72	123	Forwarding Note to accompany goods offered for despatch	No Change
63(1) a b	-	-	Railway staff to issue Railway Receipt for goods accepted for despatch/loaded by owners	New Statutory backing for existing practices
(2)	-	115	Endorsement by Railway Staff on Railway Receipt necessary to establish Railway liability for weight, description and number of packages etc.	Departure from Goods Tariff Rule 115 Railways will now be liable for description etc.,if staff endorse details of goods on the Railway Receipt.
64(1) to(6)	58(1) to(5)	-	Consignor to submit statement giving description of goods and manner in which, in absence of such a statement, the goods will be carried and charged	58(6) of IRA 1890 ommitted, be retained. This subclause had provided that in case the description of goods given in the statement tallied with the contents, the Railway shall bear the

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1986 Bill Clause No.	1890 Act Clause	Goods Tariff Rule	Brief Description	Remarks
				expenses for examination & make up for loss etc; this clause be retained as safeguard for trade.
56(1) to(6)	59(1) to(5)	-	Carriage of Dangerous & offensive goods. Manner and procedure	No. Change
66	54(3)	-	Ban on carriage of Animals suffering from infectious or contagious diseases	No Change
67	76'A'	-	Deviation of Route for reasons beyond Railways control-No breach of contract	No Change
68	28	-	Prohibition of undue preference	No Change
69(1) abc (2) (3)	27A	-	Power to issue directions in regard to carriage of certain goods on Govt. account, general routing of goods, restriction/refusal to accept traffic.	No Change
70	53	-	Maximum carrying capacity of wagons-Fixation	No Change
71	-	161/ 161A	Punitive charge for overloading	Statutory backing for Goods Tariff Rule 161. Prohibited penal freight which is 4 to5 times of normal freight. Penalty is unjustifiably levied on consignee where as consignor and railway staff are responsible. Railways should unload excess at weighbridge equipped booking points.
72	-	-	Passing the property in the goods covered by Railway Receipt to Consignee/endorsee.	New Railway Receipt becomes a Negotiable Instrument. Handling will require utmost care.
73(a)	-	Rule1848 Commercial Manual Vol.II	Consignor retains the right of stoppage of goods in transit	New Incorporated from Section 50 of Sales of Goods Act 1930 and Railway Commercial Manual Rule 1848 to give the force of law.

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1986 Bill Clause No.	1890 Act Clause	Goods Tariff Rule	Brief Description	Remarks
73(b) (c)			Railway vested with the right to claim freight from consignor despite Sec.72 which vests ownership in the possesser of Railway Receipt.	New Clause
74/75	57		Railway to deliver goods on surrender of Railway Receipt or in absence of Railway Receipt to such person as Railway may consider entitled to goods subject to a prescribed procedure	No material change
76	-	115	Reweigh goods, recalculate freight and other charges to remove errors.	Statutory backing for Tariff Rule.
77	-	118	Weighment on request under certain conditions	Powers to turn down request on grounds of congestion liable for misuse
78	76B	-	Liability for wrong delivery	No Change
79	-	-	Open delivery when consignment arrives in damaged/tempered condition	New Statutory backing for extent practices.
80(1) (2) (3)		152	Consignee to take delivery of part consignment under partial certificate. Refusal to effect partial delivery to attract wharfage.	Statutory backing for Tariff Rules
81	55,56 56A	-	Lieu for freight & other charges due	Section 55,56,56A of 1890 Act clubbed into this clause.Notice period fixed at 7 days replacing the earlier provision of reasonable time.
82	56	195	Disposal of unclaimed consignments	Unclaimed goods-defined in clause 82 (1). Procedure for disposal outlined in 82(2) a and 82(3)
83	56A (1)		Disposal of perishables under certain situations like floods,Cyclones,Accidents and non availability of alternative route	No Change

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1966 Bill Clause NO.	1890 Act Clause NO.	Goods Tariff Rule NO.	Brief Description	Remarks
84	55(5) 56A(3)		Right to recover railway dues	No change
85(1) to(4)	-	-	Powers to make rules in respect of matters mentioned in Chapter IX entitled "Carriage of Goods". Contravention of Rule punishable with fine upto Rs. 150/-	New
86	-	-	Definitions. Essential commodities notified stations, State Govt. in relation to notified stations.	New clauses: To give legal backing to practices.
87(1)	-	-	Station may be"Notified" for the purpose of removing consignments without delay under specified conditions. Notification valid for 6 months at a stretch may be renewed.	(i) Railway empowered to ensure expeditious clearance of good traffice from busy stations. (ii)Provision does not apply to Parcel Traffic
(2)	-	-	Procedure for notifying arrival of goods to consignee on specified request from consignor	
87(3)	-	-	Goods not removed within 7 days of termination of transit time may be disposed of by public auction.	New
(4)	-	-	Copies of List of "Essential Commodities" received from State & Central Govts about disposale of essential goods be sent to representative of local bodies & Local representative of State & Central Government.	

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1986 Bill Clause NO.	1890 Act Clause NO.	Goods Tariff Rule NO.	Brief Description	Remarks
88	-	-	Manner of disposal of essential Goods: Representatives of local bodies & Central and State Governments may direct delivery of "Essential commodities" to certain	New
89	-	-	Price realised be paid to persons entitled after deducting dues.	New
90	-	-	Rule making powers in respect of matters mentioned in Chapter X.	New
91	73	-	General responsibility of railway administration as carrier of Goods.	No Change
92	-		Railways responsibility for damages to goods dealt with in Private siding.	
(1)			Outwards: Only after the wagons loaded in the siding and placed back at the exchange point and railway servant advised.	New
(2)	76(c)		Inwards: Only upto the stage wagons are placed at the exchange point for unloading in the siding.	No Change

1986 BILL CLAUSE NO.	1890 ACT CLAUSE NO.	GOODS TARIFF RULES NO.	BRIEF DESCRIPTION	REMARKS
93	75(A)	-	Railway not responsible for damage/ destruction/deterioration of goods normally carried in covered wagons but which ON SPECIFIC request from the consignor are carried in open or defective wagons.	Clause 75(A) of 1890 Act changed to include supply of defective wagons on consignors request.
94	76	-	Absolves Railway from responsibility for loss, damage & deterioration due to detention/delay in transit, if Railway establish that delay/detention arose for reasons beyond its control without any negligence or misconduct on its or its servants part.	No Change except that the words "for reasons beyond its control" have been added, and clause 76 of 1890 Act reworded.
95	76(E)	-	Responsibility of Railway administration in case of Traffic over railways in India and railways in other countries is restricted to damage/loss etc., which may occur on the railway system of Indian Railway administration.	No change
96	74(3)	-	In case of goods carried at Owner's Risk the railways are not responsible for loss & damage etc; unless it is established that the railways or railway servants negligence/ misconduct caused loss.	No change
97	77(C)	-	Railways not responsible for damage/loss etc. in case of consignments which are in defective conditions or are defectively packed unless negligence/misconduct on part of railway servant is established.	No material change

1986 BILL CLAUSE NO.	1890 ACT CLAUSE NO.	GOODS TARIFF RULE NO.	BRIEF DESCRIPTION	REMARKS
98	77(1)	-	Responsibility of Railway after termination of transit. Railway Risk Rate: Railway responsible as a bailee, under Indian Contract Act for loss etc upto 7 days after termination of transit. In case of Owners Risk Rate Railways absolved of bailee's responsibility except on proof of misconduct or negligence on Railways part.	(i) Period after termination of transit reduced to 7 days from 30 days. (ii) No other change.
99	75	146 (c)	Railways absolved of responsibility for damage, loss and destruction of unbooked luggage unless railways negligence or misconduct is established	No change
100	77(A) (3)	407 (Goods) 801 (b) Coaching	Railway absolved of respobsibility for destruction/injury to animals.	Tariff Rules given statutory provision.
101	78	-	Railway absolved of responsibility for damage/deterioration etc; arising out of false description, fraud and where it is proved that damage arose due to improper loading/unloading, civil disturbances, strikes/lockouts etc; and indirect and consequential loss of market.	No change

1986 BILL CLAUSE NO.	1890 ACT CLAUSE NO.	GOODS TARIFF RULE NO.	BRIEF DESCRIPTION	REMARKS
102	-	-	Extent of monetary liability in respect of a consignment	New
(1)			(1) Where value is not declared, the liability will be limited to a particular amount i.e. at a rate on weight.	
(2)			(2) When value is declared and percentage charge is paid, liability will not exceed the value so declared subject to proof	
(3)	77(B)	406(3) Goods 140(3) (Coaching)	Railway may specify certain items which will not be accepted unless value in declared & percentage charge paid	
103	58(4)	-	Railway empowered to check contents of certain consignments/luggale of which value has been declared	Scope of 58(4) enlarged to cover all goods.
104 (1) (2)	78(B)	-	Notice of claim for compensation be served on forwarding or destination railway or intermediate point where loss actually occured	
(3)			Claim for Refund be lodged with the Railway where payment was made within six months of booking	Subclause (3) limits the lodging of refund claim with the Railway to whom payment was made. As per 1890 Act refund claim could be lodged at any point.

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1986 Bill Clause	1890 Act Clause	Goods Tariff Rule	Brief Description	Remarks
105(1)	80	-	Suit for compensation for loss/damange etc., be instituted against the Railway which was served with Notice for claim u/s 104.	(1) No change
(2)	-	-	The suit will be filed in a Court which has jurisdiction over the place located in the Railway on whoever notice for claim was served.	(2) The clause does not mentioned about suit for refund of over-charges.
106	-	-	Claim is payable to the person who produces the Railway Receipt	New: Co-related to the attributes of RR as Negotiable Instruments.
107	80	-	Suit for compensation for personal injury - Procedure for filing the suit.	No Change
108	78A	-	Burden of proof regarding quantum of monetary loss & value on the claimant	No Change
109	82	-	Railway exempted from liability subject to provisions of Merchants Shipping Act, in case of accident at Sea when goods are carried by Rail & Sea.	No Change
110	-	-	Power to make rules in connection with matters dealt with in Chapter XI.	New

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CEMENT MANUFACTURERS' ASSOCIATION

Sub: Joint Committee on the Railway Bill, 1986 - Finalisation

With regard to the following chapters of the Railway Bill 1986, our views and comments as under may kindly taken into account before finalisation of the bill by the Joint Committee:-

1. CHAPTER VI - FIXATION OF RATES - Against indents for rake load movements to single destinations, wagons are not made available to the factories in time. As a result, factories are not able to complete loading of the rake to take advantage of the freight for rake loads. In such cases, it is desirable that, instead of charging freight on wagon load basis because the wagons were not made available by the railways against rake load indents.

2. CHAPTER IX - CARRIAGE OF GOODS - Despite the facilities given to the railway staff posted at the cement factories, qualified RRs are issued by the staff giving endorsements like "said to contain", "loaded under owners risk" and loading not supervised by the railway staff etc". Under these circumstances, the claims regarding losses in transit are, thereafter not entertained to the satisfaction of cement producers by the railways. In order to ensure that interests of the producers are not adversely affected, it is necessary that the Railways staff posted at the supplying cement plants are instructed to issue clear RRs without endorsements.

Due to non-availability of covered wagons the producers are left with little option but to despatch cement in open wagons covered with tarpaulins. To avoid pilferage

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enroute escorts also are sent by the factory alongwith such rakes against payment of first class fare. It is observed that some wagons are detached enroute by declaring the same as sick. These wagons, when reach the final destination, are found with heavy shortages/damages. For such cases, railway should own full responsibility of ensuring the delivery of goods in accordance with RRs, failing to do so, claims should be entertained in full without any delay. Since escorts travel without basic facilities, which are provided to the normal passengers by the railways, they should not be asked to pay first class fare and only 2nd class fare should be charged from them. Alternatively, railway should arrange their own escorts to ensure safe delivery of the goods alongwith their own tarpaulins, to the consignees

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Joint Committee on the Railways Bill, 1986

Confidential

No. 22

INDIAN MERCHANTS' CHAMBER

M E M O R A N D U M

ON

RAILWAY BILL, 1986

Submitted

to

SELECT COMMITTEE

OF

PARLIAMENT

NEW DELHI

April 1987

Indian Merchants' Chamber Marg
Churchgate, Bombay 400 020
Phone: 204 6633 Telex: 11 5195 IN

INDIAN MERCHANTS' CHAMBER

INDIAN MERCHANTS' CHAMBER MARG
CHURCHGATE, P.B. No 11211,
BOMBAY 400 020.

Ref. No.:_____

CONFIDENTIAL

April 10, 1987.

The Chairman
Joint Committee on the Railway Bill 1986
Parliament House
New Delhi

Dear Sir,

We would, at the outset, like to convey our appreciation to the Government of India for appointing a Parliamentary Committee to examine the provisions of Railway Bill 1986, which is a total amendment of the old Act and replacement by a new one. Many provisions of this Bill will have far-reaching implications, and therefore, it is appropriate that the views of the users' organisations are taken into consideration before it is enacted into an Act. We would like to submit our views and suggestions on some of the provisions of the Bill which, we are sure, will merit your serious consideration.

General:

The Railway Act, 1890 has become obsolete, and therefore, the Bill has not come a day soon. Complete transformation has taken place the world over in the transportation system. In keeping with these developments and also looking to the needs and requirements of the existing conditions in our country the Railway Bill, 1986 is a welcome measure. The Government has, therefore, done well in bringing forward a

comprehensive Bill embracing various aspects of the Indian Railways.

The Statement of Objects and reasons clearly reveals Government's intention to rationalise and replace various provisions of the old Act, both in administration and commercial operations of Indian Railways. It has also dealt with deterrent punishment for offences and crimes committed on railways so as to make travelling comfortable for genuine passengers. The Statement of Objects and Reasons, however, has failed to take note of the need for providing minimum railway amenities and safety measures to the passengers of the Indian Railways, who are the backbone of our Railway system.

Since the launching of a planned programme of economic development of the country, the Railway network has spread to far flung areas transforming the economic life of several undeveloped and backward regions of the country. The passenger traffic has increased manifold without the corresponding improvement in the amenities and facilities offered to the travelling public. It would have been more appropriate if a reference was made to this aspect in the Statement of Objects and Reasons. We also feel that in view of substantial revenue derived from passenger traffic, a separate chapter devoted to the passenger amenities would be of great interest to the travelling public. We would, therefore, suggest that the Bill may provide a detailed chapter on passenger traffic wherein details pertaining to amenities and safety measures be indicated.

We also feel concerned about the role of the Railway Consultative Committee which have received a raw deal at the

hands of the administration in the last few years. These Committees provide a forum for discussing some of the problems and difficulties experienced by travelling public and trade in a free and frank manner so that the same can be sorted out without any loss of time. These Committees should be accorded statutory status and their working well defined in order to make them effective. The Committees should be independent organisations of the system. In the absence of any statutory powers, the Committees are not taken seriously. What is more, there is inordinate delay in constituting these Committees and meetings are also not held at regular intervals thus defeating the very objective for which they are created.

Role of Railway Rates Tribunal:

The underlying objective of constituting Railway Rates Tribunal has been to safeguard the users' rightful interests from bureaucratic decisions which might adversely affect the users at large. However, under Sections 34 and 35 of the Bill, the powers of the Tribunal are sought to be restricted only to hearing and deciding complaints pertaining to contraventions of Section 68, which debars the Railway from giving undue or unreasonable preference to any particular person or description of traffic or reasonableness of any other charges. The Tribunal is thus unfortunately expressly excluded from considering classification or re-classification of any commodity done by the Railway Board, fixation of demurrage and wharfage charges, lumpsum rates, passenger fares, freight for parcels, luggage, raw materials etc. The Government vide this provision gives absolute power to the Railway Board in determining these matters

and an independent body like Rates Tribunal is deprived of the authority to go into the details and suggest modifications, if necessary.

Also, under Section 42 of the Bill, the Rates Tribunal has been empowered to refix the rates from a date not earlier than the date when the complaint is filed. In reality it takes quite some time to file a complaint after the cause of action has arisen as collection of data in support of the complaint involves some time. It is, therefore, necessary that this Section is amended so as to give relief from a date which may be prior to the date of filing of the complaint in order to overcome hardships likely to be experienced in certain genuine cases.

Railway Receipt (RR):

The Section 63 gives legal recognition to the Railway Receipt (RR), which has not been covered by the present Act. The Section provides that the Railway Receipt shall be issued on the acceptance of the goods. No doubt this is a welcome feature. However, Clause 2 of this Section fully absolves the Railway administration of the responsibility for the guarantee of the weight, description or classification of the goods, or the number of packages mentioned in the RR unless a certificate to that effect is recorded in the RR by the Railway servant authorised in this behalf. Even at present, the reluctance of the Railway administration to issue clear RR is well-known and "said to contain" RR is already causing considerable discontentment among the users. This Clause will add to their miserable plight as they will now get the certificate only at the sweet will of the staff who normally indulge in all sorts of malpractices. It is also apprehended that in the days to come

this Section will also be used to reject claims for compensation for shortage or otherwise leaving users at the mercy of the administration. In view of stiff competition from road transport, the Railways will find it difficult to attract high value freight traffic, if this Clause is not dropped or suitably amended.

Punitive charge for overloading a wagon:

Under Section 71 of the said Bill, a person loading excess goods in a wagon beyond its permissible carrying capacity as exhibited, the Railway administration may, in addition to the freight and other charges, recover from the consignor/consignee or the endorsee, as the case may be, charges by way of penalty at such rates, as may be prescribed, before the delivery of the goods.

It is a common experience that particularly in a commodity like coal where the consignor is the Government agency and the overloading of wagons being a normal practice, the consignee which is the trade, is asked to pay the penalty for excess weight which may go to 5 or 6 times the normal freight for no fault of its own. It would, therefore, be desirable that any weight in excess of permissible limits should be off-loaded at the loading stations rather than make some one else pay the penalty. This will also spare the Railway from unnecessarily overloading the wagons.

Weighment of consignment:

Section 76 of the Bill empowers the Railway to weight or re-classify the goods and correct any error occurring, while Section 77(1) provides for reweighment which will be subject to the decision in favour of such reweighment by the authorised Railway employee. Under this Clause also the Railway

retains the right to refuse reweighment for operational reasons or at the discretion of the authorised railway servant for the reasons best known to him. It is a well-known fact that the consignee quite often receives consignment short-weight and hence to leave the discretion of reweighment to the low - ranking railway servant will lead to arbitrary decisions being taken. The refusal of reweighment will be an infringement of the right of a consignee to claim compensation for any loss in goods. Clause 2 of the Section is also very unfair because even in a case where reweighment was justified the party is supposed to pay demurrage charges.

We,therefore, feel that the reweighment should be allowed as a matter of right against the payment of the prescribed charges and should not be left to the discretion of the Railway staff. Demurrage should be waived where reweighment has been proved to be justified.

<u>Liability of Railway for wrong delivery</u>:

Under Section 78, the Railway administration shall not be responsible for any wrong delivery on the ground that such person was not entitled thereto or that the endorsement on the Railway Receipt was forged or otherwise defective.

The Railways cannot absolve themselves from the responsibility by inclusion of this Section as they have an obligation and moral responsibility to handover consignment to the rightful owner and all care should be taken against wrong delivery. Erring and negligent staff will take shelter under this Section for their inefficiency and will not be diligent in their duties. This may also be misused by the staff for obvious reasons if the Railways will disown their responsibility of return of goods

to the rightful owner or compensate for the loss.

Disposal of unremoved goods at Notified Stations:

Section 88(1) is the most deplorable one as it gives powers to the Railways to auction goods if not cleared within the period of seven days of its reaching the destination without any notice at notified stations.

It normally takes 2 to 3 weeks to receive the documents relating to consignments either through Bank or by Post after the despatch of the goods. With the introduction of Super Fast goods trains the goods may reach in 3 to 4 days and a period of seven days from then will be too inadequate, in many cases for receipt of documents and clearing of consignment. It may also lead to malpractices as the Railway staff in collusion with some undesirable elements may resort to auction of the goods immediately on completion of the seven days period or give such threat to the consignee in order to gain personal benefits. This will certainly be misused and lead to corruption and malpractice. The Railways are already charging demurrage and wharfage charges for late clearance of consignment, and therefore, this provision is quite redundant. It is likely that with the introduction of this provision the RR will no longer be a negotiable instrument because no Bank would advance money against RR if there is no certainty about the goods being delivered to the consignee or will be auctioned at the destination. This will cause considerable financial hardship both to the trading and industrial community.

WE, therefore, suggest that the period for such notice should be increased to fifteen days, instead of seven days, of the goods reaching the destination and increase storage and

demurrage charges to prevent those who use Railway premises for warehousing their goods.

Delay or detention in transit & Goods carried at owner's risk rate:

Under Section 94, the Railway henceforth will not be responsible for loss, damage etc. caused by delay, if the delay was for reasons beyond its control, while under Section 96 all bookings at owner's risk rate, the Railway will be liable only if it is proved that loss, damage etc. was caused due to negligence or mis-conduct on its part or on the part of any of its servant.

This will unnecessarily cause hardship because all delays and detention will be taken shelter under Section 94 to get away from the settlement of claim and under Section 96 it will also be very difficult for the claimant to prove the damage due to negligence of the Railways or its servant.

It is, therefore, necessary that in case of such loss or damage the Railway should bear responsibility and compensate the loss and the onus of proving the circumstances cited above should be on the Railway administration and not on consignor or consignee.

Compensation and Refund of Over-charges:

Under Section 104 of the Bill, a demarkation has been made for claiming compensation and refund of over-charges. It requires a 'notice' to be served for such claim which hitherto could be done only by a letter addressed to the Railways for preferring such claims; while under Section 105 a suit for compensation for loss, etc. of goods can be filed against the Railway only if a notice under Section 104 has been served earlier.

These two Clauses will result in unnecessary procedural difficulties and consequent litigations instead of trying to settle claims based on a simple communication addressed to the Claims Officer as is done at present. It would be advisable just to stipulate some time limit for settlement of claims in order to cut down delays in such settlement.

Imprisonment for without ticket travel:

Section 142(1)(b) provides for punishment for fraudulently travelling or attempting to travel without proper pass or ticket, being six months imprisonment and fine up Rs.1,000/- or with a minimum imprisonment of one month and a fine of Rs.250/-.

This provision appears to be too harsh particularly in a genuine case where a person is travelling without proper ticket or with no ticket either by mistake or under circumstances beyond his control. There are occasions when a person has to travel suddenly and is unable to procure a ticket due to paucity of time or likelihood of missing the train because of a long queue at the Booking Counter. He will be unnecessarily imprisoned when he is willing to pay not only the fare but a prescribed fine for his default. The provision of imprisonment in totality if introduced might be misused by the Railway Checking staff to harass such passengers and with imprisonment threat, corruption beyond imagination may result. The present practice of fine appears to be reasonable and to check this menace a surprise check both on the train and at the station be vigorously pursued so that the need for such harsh provision may not arise. Further, measures must be taken for issuing tickets as expeditiously as possibly.

Smoking in the Compartments of the Train:

Under Section 174, a passenger who smokes in train where smoking is prohibited will be punishable with a fine which may extend to Rs.100/-. This is a welcome feature. However, it may be pointed out that for a more serious offence like intoxication while on duty, any Railway servant shall be punishable with a fine to the extent of Rs.50/-, under Section 180.

We feel that this type of leniency towards Railway employees will not be proper and it should be the otherway round, i.e. the punishment for Railway employees should be much more rigorous than the erring passenger is subjected to.

Transfer of Reserved Seat/Berth:

Under Section 51, a Railway servant is authorised to permit change of name of passenger having reserved a seat or berth subject to such circumstances as may be prescribed.

This provision will hit hard genuine travelling public who will not be in a position to obtain reservation since the anti-social elements and touts will corner seats/berths in some name or the other and in collusion with the Railway staff, transfer such seats/berths to passengers at high premium especially during the peak seasons. This provision will legalise the unhealthy activities of such elements which is detrimental to the interests of genuine travelling public. We, therefore, strongly oppose such transfer of seats/berths by the Railway staff and urge you to introduce a section for taking serious steps against those elements who are indulging in bogus bookings, in collusion with the Railway staff. Hence this provision of Section 51 should be deleted.

We shall be thankful if your Committee can meet a few representatives of our Chamber when they can elucidate some of the points made herein, and also a few others which have not been mentioned here.

We are sure that our above representation will have your serious consideration that it merits.

Thanking you,

Yours faithfully,

Secretary-General.

sip/mm

MEMORANDUM NO. 23 Joint Committee on the Railways Bill, 1986

INDIAN CHAMBER OF COMMERCE, CALCUTTA

Memorandum to the Joint Select Committee
of the Parliament on Railway Bill, 1986.

In the "Statement of Objects and Reasons" the Railway Minister has stated that the Indian Railways Act, 1890 was enacted at a time when the Railways in India were mostly managed by private companies. But now almost the entire Railway system has become part of the Government of India.

A new Act has, therefore, become necessary to give effect to the changes in the railway system since its enactment as well as to embody new provisions more responsive to the needs of the present day and to delete some other provisions which have become redundant.

From a reading of the new provisions in the Bill, however, it has become manifest that most of the changes in the 1890 Act, and the new provisions, etc. incorporated in the bill generally tend to give only more powers to the railway administration than to meet the new grievances and difficulties being encountered by the users of the railway at the present time in the matters of public dealing of the railway administration.

It cannot be denied that there is a general and widespread feeling of dissatisfaction existing amongst the public as regards the working of the Railways. This has been so inspite of some of the new measures, here and there, introduced by the Railway Administration.

Quite a number of times the suggestions for improvements to ameliorate the grievances of the rail users have been submitted to the various Committees, etc. constituted by the Government from time to time, such as the Estimates Committee of the Lok Sabha in 1977, in several memorandums to the previous Railway Ministers and to other high government officials and recently to the Railway Reforms Committee but hardly with any appreciable results so far.

In the context of the above we suggest hereunder some necessary changes in the clauses of the new bill as proposed and, thereafter, submit some new provisions for incorporation in the proposed Bill :-

Clause 41: Bar of Jurisdiction of Courts:

> "No suit shall be instituted or proceedings taken in respect of any matter which the tribunal is empowered to deal with or decide under this Chapter."

It is noted that the tribunal shall have the powers of a Civil Court, under Civil Procedure Code as per the existing Act.

There should not be any restriction on the powers of superior courts such as High Courts in respect of any such matter for the ends of justice as well as speedier redress of grievances by the extra-ordinary jurisdiction of High Courts.

This new provision as quoted above should, therefore, be expunged.

Clause 61(2):

When both RR rates and OR rates are quoted - The sender must get the option to elect in writing to pay the RR risks rate and the Railway in such a case is to issue a certificate to the sender in this respect as per previous system. The sender must know that he is electing the RR risk rate.

Clause 71:

Where a person loads goods in a wagon beyond its permissible carrying capacity - a Railway Administration may, in addition to the freight and other charges; recover from the consignor, the consignee or the endorsee, as the case may be, charges by way of penalty at such rates as may be prescribed, before the delivery of the goods.

It is paradoxical that consignees are asked to pay the stiff penalty for overloading when they have no role in or control on the loading operations. The consignments are mostly loaded under supervision of the Railway and as per Railway rules wagon-load consignments should be weighed at the booking point and if the Railway fails to weigh them at the booking point they should be weighed either at an intermediate point or at the destination. Under the circumstances, if overloading is detected at intermediate point or at destination it is no fault on the part of the consignor or consignee. If overloading is detected at the booking point the extra weight can be off-loaded and if the overloading is detected anywhere else in transit or at the delivery point the

consignor/consignee should not be penalised as it is entirely due to the faulty supervision of the Railway servants at the loading time or failure to weight the consignment some where in the route and off-load the overloaded goods. Due to the default of the railway in not having weighment facility at the loading point the consignor/consignee should not be penalised.

This provision should, therefore, be deleted.

Clause 77(1):

The existing provision for reweighment as laid down in the Indian Railway Commercial Manual should be incorporated in the new Railway Act as the new provision as noted in Clause 77(1) gives much scope to the Railway to disallow reweighment summarily without giving any reasons for exercising discretionary powers or on operating reasons, etc. which may amount to great injustice to the consignees in bonafide cases when misconduct on the part of Railway Administration is apparent from the visual examination of the contents of the wagon. Existing provisions as noted in the Indian Railway Commercial Manual should be incorporated in the I.R. Act. This states that the Railways do not undertake reweighments as a matter of course except when the condition of the consignment warrants this.

Even coal booked at owners' risk rate, etc. and goods which are likely to lose in weight in transit can be reweighed at the special discretion of the railway on the exceptional merits of specific cases.

Clause 78:

The measure to absolve the Railway from the responsibility of wrong delivery as noted in the Railway Bill should be recast. The Railway delivery clerk should be made responsible if by the application of ordinary diligence and carefulness wrong delivery can be avoided.

Clause 80(1):

One para i.e. 80(4) as noted below should be added:

80(4): Partial delivery may be effected on recovery of proportionate freight for the part consignment delivered and not on the full freight as in the Railway Receipt.

Clause 81: Lien for Freight or any other sum due:

Under Clause 81(2) the Railway Administration is empowered not to hold auction for reason to be recorded in writing but to dispose of the consignment in such manner as may be prescribed. The whole clause as suggested in the Bill should be deleted and the undernoted procedure should be incorporated.

The Railways have the authority to dispose of a perishable consignment by auction when due to breaches, landslides, etc. it is likely that the consignment will be damaged if detained till the restoration of through communication or diverted by available route. Before putting such perishable consignment to auction it is, however, necessary that the instructions of the owner should be obtained wherever practicable. Staff at stations should, therefore, take the following action in such cases :

When booked consginments are awaiting loading at or

despatch from the forwarding station an immediate notice should be served by the quickest means possible, on the sender asking for his instructions within twelve hours.

In the event of no instructions being received within the period as specified above, the consignment will be disposed of without any further reference to the consignor.

If perishable consignments are held up at any intermediate station all concerned including the forwarding and destination stations should be intimated by wire giving the description of goods with particulars of booking and asking them to obtain and furnish telegraphic instructions from the sender and the consignee. It should be made clear that the consignments will be sold by public auction in the event of no instruction being received within 48 hours from the time of issue of the message. The consignments may also be sold by public auctions earlier, if they are likely to become offensive.

Clause 82(1): Unclaimed Consignments:

The notice period should be for 15 days in place of 7 days.

Clause 83(1): Disposal of Perishables in certain circumstances:

As suggested in case of Clause 81 above.

Clause 92(1)+(2): Goods to be loaded or delivered at a siding:

The following should be added to the Clause:-

If the siding owner has a Railway siding clerk appointed at his expense - the liability for shortages or deficiency transpiring from seal's intact inward wagon remains with the railway if any shortage or deficiency transpires from unloading of the wagon and certified by the railway siding clerk. Therefore, the liability of the railway does not cease after the wagons is made over to the siding owner under clear signature at the Interchange Point.

Clause 93:

In case of consignments loaded in open wagons at the request of the consignor or booked with defective packing, the non-existence of Railways responsibility should be limited to the extent of destruction, deterioration or damage occuring as a direct result of the consignment being loaded in open wagons i.e. the goods being so carried in open wagons, as previously.

As regards defective packing or condition of the goods it must be proved by the Railway that the destruction, deterioration and damage occured only due to the goods being so packed or being already in defective condition.

The word "only" after "arise" should not be omitted. The word "only" is meaningful.

Clause 94:

In this phrase "reasons beyond control" should be deleted. For delays or detention in transit Railways' should be made responsible in the category of negligence, misconduct on the part of the Railway staff. Delay as a cause of action has been long recognised by the courts and the onus rests on the Railway to prove that the delay was not due to any negligence or misconduct on the part of the Railway administration or any of its servants.

Clause 97(1):

"Notwithstanding anything contained in the foregoing provisions of this chapter...." should be deleted.

Clause 97(1)+(2)(b):

The following should be added:

The Railway Administration shall be bound to disclose to the consignor/consignee how the consignment was dealt with throughout the time it was in its possession or control, but if negligence or misconduct on the part of the Railway Administration or any of its servants cannot be fairly inferred from such disclosure, the burden of proving negligence or misconduct on the part of the Railways shall lie on the consignor/consignee.

The last para of Clause 97 should be recast as below :

"Provided that the Railway Administration shall be responsible for any such damage, deterioration, leakage, or

wastage - (i) if the Railway Administration first fails to prove that the deterioration, breakage, wastage or damage has been the direct result of the defective condition of the goods or defective packing; and (ii) if negligence or misconduct on the part of the Railway Administration, or any of its servants is proved.

Clause 98: This should be reframed as below :

(1) A Railway Administration shall be responsible as a bailee under section 151, 152 and 161 of the Indian Contract Act, 1872, for the loss, destruction, damage, deterioration, or non-delivery of any consignment upto a period of thirty days after the termination of transit.

Seven days period is too short to enable the consignee to arrange preliminaries prior to taking delivery in actual practice.

(2) The Railway Administration shall not be responsible for the loss, destruction, damage, deterioration or non-delivery of goods carried by railway, arising after the expiry of the period of thirty days (instead of seven days) after the termination of transit, except on proof of negligence or misconduct on the part of Railway Administration or any of its servants. The reframing is necessary because if for any unavoidable reasons the consignee fails to take delivery within a period of thirty days after termination of transit it is not fair that it will entirely depend upon the sweet-will of the Railway to do away with the

consignment or part of it as it will then lie entirely at the mercy of the Railway once the period as noted above terminates.

Clause 104(1):

In place of "within a period of six months from the date of entrustment of the goods" it should be "from the date when the goods were delivered to the consignee under qualified receipt in case of any damage or partial loss etc. i.e. after the consignee becomes aware of whether any damage or partial loss has been caused to his consignment."

Only in the case of total non-delivery the period of six months should run from the date of booking. There are in certain cases as at present the claim has to be preferred even before the date of delivery or even before the consignee is aware whether any damage or loss has been caused.

In case of wrongful delivery i.e. in cases of conversion, the notice period is to commence from the date when the consignee becomes aware of the incident of conversion of the consignment.

It is the duty of a carrier to deliver the goods with which he is entrusted, to the person designated and as a general rule misdelivery is a conversion as it amounts to unjustifiable denial of the owner's title to the goods.

Clause 105(1) & (2): Suits for compensation for loss, etc. of goods.

As per the wording in this Sub-Clause (1) & (2), the suits for compensation can be instituted only against the Railway Administration in a Court having jurisdiction over the place at which the goods are entrusted for carriage or as the case may be, over the place at which the destination station lies or loss, destruction, damage, deterioration occurs. Again, it has been noted that the above rule would apply notwithstanding anything contained in any other law for the time being in force. Again as per present statutory directive of section 20 C.P.C. every suit shall be instituted in a Court within the local limits of whose jurisdiction the defendant actually and voluntarily resides or carries on business or working for gain.

As stated above, as per Section 80 I.R.A., a suit can be instituted in a Court having jurisdiction over the place at which the goods were delivered for carriage or in the Court having jurisdiction over the place in which the destination station lies. The Case - Laws on the subject point to divergent opinion - that is, some High Courts have held that the Courts where the suits can be instituted as per section 80 I.R.A. are in addition to the forums where suits can be instituted as per section 20 CPC while some Courts have held that the special provision made in the 80 I.R.A. overrides section 20 C.P.C.

To set at rest the existing controversy it is suggested that the new I.R.A. should be formulated keeping an eye on the

defendant's as well as the plaintiff's convenience, i.e. on the basis of section 20 C.P.C.

The defendant is able to defend the suit without any undue trouble as the Court cases are handled by the Central Head Office of any Railway and it will be also convenient for the plaintiff to institute the suit at the Railway Head Quarters Place. Moreover, as running of the Railway is a commercial business and as such when cause of action arises within the jurisdiction of different Railways it is convenient for both the parties to file the suit in a Court where the Head Quarters of the Railway are situated.

This Section, therefore, should be suitably recast to give statutory recognition to the convenient forum where suits can be instituted as per section 20 Civil Procedure Code as discussed above.

Clause 153 & 154: These sections should be expunged.

The provisions made in these sections are drastic against the Railway Transport Users.

It has scope for controversy whether the claims have been made falsely as the information on the basis of which the claims are preferred may be incorrect or wrong at times and this section will then give sweeping power to the railway to take penal action against the Claimant which is not at all fair and desirable.

It is open for the railway to enquire into the claims matter and to repudiate the claim and because of this there is enough safeguard in the rule as regards preferment of claim within some time-limit to guard against fraudulent submission of claims.

Clause 196 & 197: Bar of Jurisdiction of Civil Courts, etc. and Protection of action taken in good faith:

The provision made in this section is very much sweeping and violative against the concept of rule of law, and therefore, should be deleted.

New Provisions to be incorporated:

1. Burden of Proving misconduct in case of non-delivery or pilferage in transit of goods carried at Owner's risk rate.

Notwithstanding anything contained in Clause 96 -

(a) Where the whole of a consignment of goods, or the whole of any package forming part of a consignment, carried at owner's risk rate is not delivered to the consignee and such non-delivery is not proved by the Railway Administration to have been due to fire or to any accident to the train, or

(b) where, in respect of any consignment of goods or of any package which had been so covered or protected that the covering or protection was not readily removable by hand, it is pointed out to the Railway Administration on or before delivery that any part of such consignment or package had been pilfered in transit,

the Railway Administration shall be bound to disclose to the consignor how the consignment or the package was dealt with throughout the time it was in its possession or control, but if negligence or misconduct on the part of the Railway Administration or of any of its servants cannot be fairly inferred from such disclosure, the burden of proving such negligence or misconduct shall lie on the consignor.

If the plaintiff is not satisfied with the disclosure made, he can call upon the Railway Administration to adduce evidence in support of the disclosure made. If any material evidence is withheld the Railway may expose itself to the presumption under section 114 (g) of the Indian Evidence Act, 1872.

2. Statutory time-limit for finalisation of claims:

At present, the Railway has only a rule as regards finalisation of claims which states :

> "Every effort is made to settle claims expeditiously. Individual cases, however, may require prolonged enquiries and whether a claim will be ultimately paid or not would depend upon the result of such enquiries."

This gives a long rope to the Railway Administration to keep the claims unsettled for long time till the same are either taken to the Court of Law or repudiated on the ground of the suit becoming suit-barred.

The matter has been taken up times without number with the Railway Administration at various levels but without any result.

It is suggested that a firm statutory time-limit which may be on the high side say, one year in place of the present six months is laid down and if even by this time some claims are not settled (including repudiated claims on which appeals have been preferred), the same should be put up to a "Review Committee" or "Claims Tribunal" and the cases are settled if possible, before they are allowed to go to the Court of Law.

There is a proposal to set up "Claims Tribunals" on the pattern of Income Tax Tribunals, as Courts take very long time to dispose of Court cases involving very heavy expenses, for quick disposal of cases. It should made statutorily compulsory to go through such Tribunals before instituting the cases in Courts of Law.

3. Higher Freight on account of Rationalised routes or when routes are to be closed for reason of flood, breaches, etc.

Since the Plaintiffs are not responsible for the carriage of the consignments by the longer routes under such circumstances or since the benefit of any rationalisation of the routes accrues only to the Railways the transport users should not be penalised by way of higher freight when consignments are carried by the railways by other than the shortest route.

As per present Rule if any consignment is to be carried by the longer route the consignor's express permission in writing has to be taken.

4. In the proposed new Act the undernoted sections have been incorporated to give unrestricted power to Railway Administration to make rules :

Clause 90(1) :	The Central Government may, by notification make rules to carry out the purposes of this Chapter.
Clause 110(1) :	
Clause 134(1) :	
Clause 141(1) :	

Clause 207:

The Central Government may, by notification, exempt any Railway from all or any of the provisions of this Act.

Clause 209:

Without prejudice to any power to make rules contained elsewhere in this Act, the Central Government may make rules generally to carry out the purposes of this Act.

All the above enabling Clauses as incorporated in the proposed new Act should be expunged as they confer unlimited power to the Railway to make any rules in annulment of any provisions embodied in the Act when passed by the Parliament.

This is most undesirable as it gives scope to the Railway Administration to override and circumvent any provision in the Act when once entered in the statute arbitrarily overriding the Parliament. This is not desirable for obvious reasons.

The present power to make rules conferred by Section 47 of the present I.R.A. is considered sufficient to empower Railway Administration to make rules consistent with the Act and should be retained.

Joint ... on the Railways ... Memorandum No 24

SUGGESTIONS ON RAILWAYS BILL 1986

1. Government of India on the face of it appears to be committed to promotion and protection of consumer interest. It is largely demonstrated by the inclusion of "Consumer Concerns" in the 20 point programme. It has been further reinforced by the enactment of a new legislation, the Consumer Protection Act, 1986. The various amendments to different laws like Essential Commodities Act, Prevention of Food Adulteration Act, Weights & Measures Act etc. have all conferred upon registered voluntary consumer associations the authority to take legal action against erring manufacturers, merchants and other suppliers.

It is expected by the Consumers and Consumer groups that various Ministries and Departments of the Government at the Centre and State level shall provide greater priority to consumer interest.

2. It is within this framework of openness and encouragement that CERC is approaching the Joint Committee of Parliament constituted on the Railway Bill, 1986 and submitting its comments and suggestions for the committee's consideration.

3. The Railway Bill 1986 is in the form of retrograde steps in the promotion and protection of consumer interest by Railways.

Even some of the present provisions aiming at promotion and protection of consumer interest, which were provided for in the century old Railways Act enacted by the British Government are proposed to be withdrawn by the new Bill. Such provisions of the Railway Bill are a cruel joke on the consumers.

4. In Chapter-III of the Bill new provision for Commissioner is introduced in place of the provision for Inspectors in the existing Act. It is suggested that instead of Commissioners the Act should provide for independent commission of which atleast one member should be a judicial member preferably the Chairman. The Commission should also have as its Members

(i) Representatives of Consumers

(ii) An expert in the field of Railways preferably a person from outside the Railway Administration.

It shall be the duty of such commission to constantly monitor the working of the Railways all over the country by inspections of Railways, carriages etc. keeping in view the safety of the consumers. The Commission should also make inquiries into the causes of Railway accidents and reports of such inquiries should be made available to the general public.

5. In the existing Act Section-13 provides for removal of trees and a prescribed procedure is required to be followed for that. In the proposed Bill Section-13 of the Act does not provide for any previous permission of the District Magistrate or compensation to be paid to the owner for removal of trees or anything obstructing or likely to obstruct the running of trains. It is suggested that the existing provision of Section-13 should be retained in the proposed Bill, of course with the powers to remove obstructions with the previous permission of the District Magistrate.

6. Section-14 of the proposed Bill provides that the award of compensation passed by the District Court shall be final while section-18 of the existing Act provides that provisions of Section-18 to 34 (both inclusive) and provisions of Section-51 and 52, 53 and 54 of Railways Act, 1894 shall apply to the award of compensation thus giving a right of appeal to the owner before the High Court and thereafter before the Supreme Court. The proposed bill takes away this right of the owner of the property to file appeal before the High Court and thereafter to the Supreme Court. It is suggested that the present provisions should either be retained in the proposed Bill or appropriate provisions for appeal against the award be introduced in the proposed Bill.

7. In Section-28 it is not made obligatory on the Central Government to accept the suggestions of the Commissioner while the present section-19 makes it compulsory for the Central Government to accept the suggestions of the Inspector. It is suggested that the present provisions are more safety-oriented and the proposed Bill should retain these provisions which are more in the interest of the general public. It is also important to note that there is no provision in case the Central Government does not comply with the suggestions. No remedy is provided for in the proposed Bill unlike the existing provisions.

8. Sections-34 and 35 of the proposed Bill empowers the Railway Rates Tribunal to examine violation of section-68 which debars the Railways from giving undue or unreasonable preference

to a particular description of traffic and which also looks into the reasonableness of reduced rates and levy of other charges which is unreasonable; but the classification or reclassification is left to the Central Government. Likewise demurrage and wharfage charges as well as lump sum rates and passenger fares are kept outside the purview of R.R.T. This provision is against the interest of the consumers in so far as it does not give the R.R.T. enough powers to look into the reasonableness of passenger fares as well as classification reclassification and demurrage and wharfage charges. It is suggested that the R.R.T. should be given powers in the above matters.

9. In Section-38 of the Bill the words ".....which that Government may think relevant" should be substituted by the words "....which the Tribunal may think relevant". It is suggested that the power to examine relevancy of the documents should be vested in the Tribunal and the Central government should leave it to the discretion of the Tribunal.

10. Section-42 of the proposed Bill p ovides that R.R.T. is empowered to refix the rates from and the date not earlier than the date when the complaint is filed. It is suggested that this provision does not take into account the time taken for collection of data which depends upon the cooperation the consumer gets from the Railway Administration. It would, therefore, be fair for the R.R.T. to give relief from a date upto one year earlier to the date of filing the complaint because absence of such provision leaves the person without legal remedy.

11. Section-43 of the proposed Bill gives the power to the R.R.T. to review its order at the instance of the Railway Administration in case of changed circumstances but no right is given to the consumer in such circumstances. It is therefore suggested that the consumer shall also have a right to ask for review of the order passed earlier.

12. Section-49 of the proposed Bill provides that tickets are deemed to have been issued subject to the conditions of availability of accommodation in the class but there is no provision making it mandatory for the Railway Administration to provide accommodation to holder of valid ticket. It is suggested that the Bill should provide for a provision which should make it mandatory for the Railway Administration to refund full value of ticket in case the Administration fails to give accommodation to the holder of that ticket, even in the lowest class.

13. Section-55 of the proposed Bill provides for fixation of maximum number of passengers which may be carried in each compartment but the Bill does not provide for the remedy in case of Railway Administration carrying more than the prescribed number of passengers. It is suggested that it must be made mandatory for the Railway Administration to provide for accommodation of prescribed number of passengers only to curb overcrowding of trains.

14. Section 72 says that the property in the goods shall pass to the consignee or endorsee on delivery of such R.R. to him and thereafter he shall have all rights and liabilities of the

consignee. Further provision should be made to the effect that the Railway shall be bound to recognise the consignee or endorsee and cannot question the title to the goods thereafter. It should be made a presumption. This section is also required to be read with Section 74 of the Bill. The question of title cannot be left to the opinion of the Railway administration when the R.R. is not forthcoming at the time of delivery of the consignment. Some elaborate provision is required to be made under the proviso to section 74. The same is the case with Section 75.

15. Section 72 deals with liability of Railway administration in case of wrong delivery. This provision in our view is unjust. There is no reason why the Railway administration like any other administration such as a bank, cannot be made responsible for wrong delivery on the ground that such person is not entitled to delivery of the consignment or that the endorsement, legally speaking there would not be any endorsement at all and therefore, Railway administration cannot be absolved from its liability. While accepting an endorsement, the Railway administration should be fastened with a responsibility to see that the endorsement of appearing to be proper on the face of it. The wording of section 78 as they are, are very loose and will not be full proof in case of forged or otherwise defective endorsement on the R.R. and section regulating the delivery of the goods.

16. So far as section 79 is concerned, the same deals with the delivery of the consignment arriving in damaged condition or in a condition indicating that the same was tampered with and open delivery is being sought. The consignee or endorsee cannot be

forced to take delivery of the consignment even if it is in damaged condition outwordly. Open delivery should be made optional. The consignee should be clothed with better rights in this respect.

17. In case of short delivery of the goods or non-delivery of the goods or in case of damage or loss of the goods during transit, the owner of the goods is left to his remedy of filing a suit in a Civil Court after getting necessary certificate of loss and/or damage. He is also required to serve a statutory notice which is of two month as required by Section 80 of the Civil Procedure Code. This notice is over and above the one which is required to be given to the Railway administration under the Railways Act and the present Bill also. This provision of double notice should be modified. Instead, a short period notice should be prescribed and the notice of filing of claim should be sufficient. Statutory notice under Section-80 of the Civil Procedure Code is uncalled for. This unnecessarily causes expenses to be incurred by the owners of the goods. Secondly, instead of providing for a suit in the Civil Court, a simple remedy of approaching the Commissioner or a Tribunal to be formed under the Railway Bill should be provided. It is suggested that at present under the Motor Vehicles Act a Tribunal is provided for compensation for personal injuries and death arising out of the use of motor vehicles. Similarly, in the case of consignment of goods by Railways, powers can be entrusted to such tribunal which can be empowered to hear the questions involved by summary procedure. This will obviate the long procedure of civil suit

and will also give summary powers to the Tribunal to deal with the question. It will also save a lot of court fees for the litigants. Such claims can be preferred on a court fee stamp of Rs.10/- or so only.

18. Moreover, suits have a long and chequered career and takes usually long time to get disposed of. Therefore, it would be proper to constitute a Tribunal for the disposal of the said cases.

19. Chapter-XIII of the proposed Bill provides for accidents and compensations. It is a welcome feature that the Railway has accepted 'no fault liability' in case of accident but the maximum limit is prescribed at Rs.1 lac only. It is suggested that the formula of multiplier which is a judicially accepted formula in case of Motor Accidents Claim should be adopted in the Bill for awarding compensation to the victims. It is also submitted that two public transport authorities cannot stand on different footing because State Road Transport Corporations are paying the compensation in case of Motor Accidents as per the multiplier formula. It is more logical, reasonable and proper because the Railway passengers are in no case responsible for any accidents and they should not be made to suffer because of the lapse caused by the Administration.

20. In the Railways bill itself, appointment of a Claims Commissioner is contemplated under Section 123 for dealing with the question of liability of Railways administration for death and injuries to passengers due to accident. This Commissioner

can also be entrusted with the work of such civil suits in respect of loss and damage to the goods which are carried by the Railways. Provision for the appointment of such Claims Commissioner will also avoid hardship. Litigants who are not able to produce the evidence to show how the goods were dealt with by the Railways after their entrustment for carriage. Moreover, there is difficulty of reading the Railway documents which use their own peculiar language. It is, however, to be noted that such Commissioner should be a judicial officer and be clothed with all judicial powers.

21. The appointment of Claims Commissioner under Chapter XIII of the Railway Bill should be treated in a similar manner as above. Such Claims Commissioner should be a judicial officer.

22. The limit of compensation provided for in cases of injury or death should not be provided for. It should be unlimited and should be left to be determined by the Claims Commissioner. It is observed that our experience in the Court is that the suits against the Railways in respect of consignment of goods take a long time and, generally, difficulty is experienced by all who use Railways for carriage of goods. The procedure should be simplified.

23. The proposed Bill should provide for a National Transportation Safety Board on the lines of U.S. Model which constantly monitors the transportation in U.S.A. and suggests remedies and precautions to avoid accidents.

24. The proposed Bill should also provide for a Railway User consultative Committee, the function of which should be to ensure maximum protection of the passengers from accidents, exploitation etc. and to evaluate the performance of the Railways at prescribed periods. In the proposed Bill appropriate provision should be made making it compulsory for the Railways to provide for drinking water, proper sanitory facilities, medical facilities as well as police protection to the Railway passengers.

25. In addition to the above, appropriate provisions should be made so as to ensure convenience to the persons travelling on the train who are victims of the offences committed on the Railways. It is suggested that appropriate provision should be made to avoid breaking of journey in such situations.

N. F. I. R.
NATIONAL FEDERATION OF INDIAN RAILWAYMEN
Central Office,
3, Chelmsford Road,
NEW DELHI-55

MEMORANDUM NO. 25

M E M O R A N D U M

Submitted to the

The Joint Committee of the Parliament

On

Railway Bill, 1986

The Hours of Employment Regulations, 1961 of the Indian Railways were substituted by the Railway Servants Hours of Employment Regulations, 1951 containing therein number of suggestions made by the Adjudicator Justice Shri Rajadyaksha in his Award. In his Award, given in 1947, Justice Rajadyaksha had suggested certain amendments to the Indian Railways Act. Accordingly, the Indian Railways Act was later amended in 1956 by adding a new Chapter, Chapter VI (A). Chapter XIV of the Railways Bill, 1986 is a virtual reproduction of Chapter VI(A) of this Act i.e. the Indian Railways Act.

The provisions in Chapter XIV of the Railways Bill,1986 do not take into account the changes that have taken place since the Adjudication Award in the national law and practise on the subject and thinking at national and international level regarding limitation on the Hours of Employment of Industrial Workers. The sure and certain trend is to reduce the working hours.

Surprisingly enough the provisions in the Bill also overlook the recommendations, including those which have been accepted in toto by the Government, made by the Railway Labour Tribunal, 1969 headed by Justice N.M.Miabhoy, retired Chief Justice of the Gujarat High Court. It needs be mentioned here that this Tribunal was specially appointed by the Government by agreement between the NFIR and the Railway Board as per the procedure under the Permanent Negotiating Machinery (PNM) Rules.

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Development of national law and practice, trends in National and International thinking on the subject and the important recommendations of the Railway Labour Tribunal are dealt hereunder.

National Law & Practice

At the time when the Adjudicator, Justice Rajadyaksha gave his award the then Factories Act was the only legislation governing the hours of work of industrial workers. Hours of work in various Industries, Commercial Establishments and Services were fixed by law in the post-adjudication period. Important among such legislations are :-

i) The Indian Factories Act - 1948
ii) The Minimum Wages(Central)Rules - 1950
iii) The Plantation Labour Act - 1951
iv) The Mines Act - 1951
v) The Motor Transport Workers Act -1969
vi) The Shops and Establishments Acts of various States

The common features of these legislations are :-

a) Standard daily hours of work of 8 per day and/or 48 hours per week;

b) Maximum daily hours of work including overtime not to exceed 10 hours;

c) Payment of overtime at twice the ordinary rate of wages on daily basis for over hours of work beyond the standard hours;

d) Compulsory daily interval of half an hour before exceeding 5 hours of work;

e) Minimum weekly rest of one full day.

It may be stressed here that unlike the Railways Act, the power of exemption from the maximum ceiling hours, overtime working etc. in all the above legislations, lies always, with the Government and not with the employer.

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ILO Recommendation, 1962

The 46th Session of the International Labour Organisation adopted a Recommendation titled "Reduction of Hours of Work Recommendation,1962", which states that

> Normally hours of work should be progressively reduced with a view to attaining 40 hours per week without any reduction in the wages of workers at the time hours of work are reduced. "Where the duration of the normal work in a week exceeds 48 hours, immediate steps should be taken to bring it down to this level without any reduction in the wages of the workers as at the time hours of work are reduced".

(Page 1028: Conventions & Recommendations, 1919 - 1966: ILO, Geneva, Publication).

The National Labour Commission

The National Labour Commission headed by Chief Justice Dr. P.B.Gajendragadkar, 1969, recommended in their Report that though the current requirements of the economy might not permit immediate reduction in the present working hours of 48 per week, the same should be brought down to 40 hours per week in stages. In the first stage they should be brought down to 45 hours. This recommendation was made nearly 20 years before(Para 9.36 and 9.40 of the Report).

Railway Labour Tribunal, 1969

The Report of the Railway Labour Tribunal, 1969 bears direct and great significance to the subject on hand. The One Man Tribunal called The Railway Labour Tribunal, 1969 was appointed by the Central Government, consequent upon agreement between the NFIR and the Railway Board, to adjudicate upon the demands made by the NFIR regarding the Hours of Employment on the

...4/-

Indian Railways. The One-man Tribunal was headed by Shri N.M.Miabhoy, retired Chief Justice of the Gujarat High Court. The Tribunal gave its award in July 1972.

In the course of its Award the Tribunal made far reaching recommendations suggesting changes in the Hours of Employment on the Indian Railways. These recommendations basically alter many of the provisions as contained in Chapter VI (A) of the Indian Railways Act. Important among such recommendations are:

(Para Numbers mentioned herein are Para Numbers of the Report of the Railway Labour Tribunal, 1969).

i) The hours of employment shall be those during which an employee is at the disposal of the employer at the employwer's instance i.e. the duty of an employee commences when he places himself at the disposal of his employer at the latter's instance and such duty continues until he is fully at liberty to leave the place of duty; (para 6.51)

ii) The standard daily and weekly hours of employment of Continuous and Essentially Intermittent Workers shall be fixed at 8 and 48 respectively; (para 6.53)

iii) Daily and Weekly hours of Essentially Intermittent Workers may be increased by such number of hours as may be necessary subject to maximum of 4 hours per day and 24 hours per week in the case of workers at outstations who are provided with residential quarters within a radius of 0.5 kms from the place of their duty and maximum 2 hours per day and 12 hours per week in the case of rest of the Workers; (para 6.5, 6.131).

..5/-

iv) Preparatory and complimentary work must necessarily be carried on outside the limits of general working of an establishment, branch or shift (para 6.54).

v) Workers falling outside the weekly or fortnightly averaging will be paid Overtime on daily basis i.e. everyday beyond the daily hours of work. The daily rates of Overtime being calculated on the basis of the total number of rostered hours during averaging period fixed for the concerned employee and not on the statutory limits; (para 6.60 & 6.63).

The recommendation made in (i) above, signifies that the duty of an employee commences when he places himself at the disposal of his employer at the later's behest and such duty continues till he is fully at liberty to leave the place of duty. This basic principle strikes at the very root of the E.I. Classification and also keeping the handing over and taking over outside the pale of scheduled duty hours.

Abolition of the Essentially Intermittent(E.I.) Classification

Presently the staff classified as Essentially Intermittent (E.I.), have to perform duty either at 10 hours per day or 12 hours per day excluding preparatory and complimentary work, if any. The NFIR had pressed before the Tribunal for the abolition of the E.I. Classification. Even while rejecting the demand the Tribunal saw full merit in the Federation's contentions and said so in so many words.

The Tribunal decided that "in any case no ceiling can be fixed which is inconsistent with factors like civil, domestic and humantarian" (para 6.129).

The Tribunal also rejected the premises of the Adjudicator in making the E.I. Classification a general classification.(para 6.129).

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The Tribunal further remarked that, "having referred to international thinking and national legislations on the subject, in my opinion, except for the limited class of persons working at outstations and for whom the quarters are provided or the class of workers such as Class 'C' Gatemen, 60 hours per week should be the total number of hours, for which they should be called upon and therefore they should be rostered ordinarily for 10 hours duty per day. (para 6.129).

Pointing out the provisions of the Factories Act the Tribunal stated that the Act provided for the maximum limit of 10 hours for Intermittent work per day inclusive of rest intervals and further that prescription is also hedged by some other conditions. (para 6.128).

The Tribunal also cites that the Preparatory Report of the Washington Convention provided a maximum of 60 hours per week in the case of permanent exceptions which includes Essentially Intermittent (para 6.128).

Further as the Tribunal pointed out that the ILO Convention No.30 fixes the ceiling limit of 10 hours per day and 60 hours per week for intermittent work that also in non-industrial establishments.(Para 6.128).

Finally, the Tribunal accepted in so many words the NFIR's contention for the abolition altogether of the E.I. category. The Tribunal stated:

> "Under the circumstances, in my opinion, wisdom lies in adopting suitable methods by all Railway Administrations with a view to ultimately eliminating altogether the E.I. Classification and in the meantime to take all such measures which may reduce as far as possible the number of E.I. employments to the minimum number possible and even if the reduction is necessary to explore ways and means for converting E.I. employments into Continuous employments(para 6.124).

...7/-

The above observation was made 15 years back but no action till date has been taken in this regard. The NFIR in these circumstances holds the firm view that the Essentially Intermittent (E.I.) Classification should be totally abolished.

Preparatory and Complimentary work

Preparatory and Complimentary work is necessarily to be carried on outside the limits of general working of the Branch or Shift. Preparatory & Complimentary work at the same time is considered to be duty. If considered as duty it must be within the limits of standard working hours. If it is to be performed outside the standard working hours then it must be paid for treating as over hours of work. Otherwise rosters will have to be prepared including the preparatory & complimentary work in the shift so that no shift exceeds standard hours.

Averaging Hours of Work

In our considered view the principle of Averaging is warranted only in cases where fixed rosters cannot be prescribed. To be precise the principle of Averaging may be warranted on the Railways only in the case of Running staff.

But presently Averaging period for Intensive and Continuous workers is fixed at two weeks and for Essentially Intermittent workers at one week with the result that Continuous and Intensive Workers will earn Overtime if they put in more than 96 and 84 hours respectively in two weeks plus the hours involved in preparatory and Complementary work where prescribed. Similarly Essentially Intermittent workers will earn Overtime if they are required to put in more hours in a week than determined plus preparatory & complementary work where

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prescribed. This results in taking work for more than the standard hours from an employee and not paying him the due Overtime payment. In the case of Shift workers, keeping in view the nature of Railway working we are agreeable that no employee should leave the place of duty unless he is relieved properly; but a person who for this reason works over hours of work beyond his scheduled shift he must be properly compensated by paying Overtime.

It may be incidentally brought to the notice of the Committee that the recommendations made by the Railway Labour Tribunal to list the categories of staff who are to be covered by daily Averaging within two years of the passing of the Award, has not been fully implemented. The Principle of daily Averaging should be followed in all cases of fixed rosters whether working in a single shift or more.

Weekly Rest

The quantum of Weekly rest should be determined taking the rest available to single shift workers as the basis. In other words every worker should be assured of a Calender day's rest every week. For example in the case of Continuous worker the Weekly rest should be of 40 consecutive hours duration.

Suggestions For modification

Provisions are required to be made in the new Railways Bill 1986 to provide for :

i) Treatment of the hours of employment as those during which an employee keeps himself at the disposal of the employer at the latter's instance;

ii) Standard hours of work of 8 per day and 48 per week;

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iii) Preparatory&Complementary work done beyond the standard hours should be compensated as a Overtime.

iv) Total abolition of the E.I. Classification.

v) No Averaging of hours of work in the case of staff on fixed rosters. (Their hours of work should be on daily basis and Overtime paid accordingly).

vi) Daily spread over not to exceed 10 hours;

vii) Restructuring the power of exemption of employer's from the provisions of the Act, and

viii) Provision of weekly rest of one full calender day.

Penalties

Section 71(H) of the present Act provides for penalty for a person under whose authority any Railway Servant is employed in contravention of any of the provisions of this Chapter or any other Rules made therein shall be punishable with a fine which may extend to Rs.500/-. This Penal provision finds no place in the Railways Bill 1986. Penal provision as under Sec. 71(H) as above should be introduced.

General

i) It is earnestly suggested that the word 'Railway Servant' in the Bill may be substituted by Railway Employees';

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ii) Section 138(i)(A): Not less than 24 consecutive hours occurring at the end of the Section 138(i)(A) appears to be a mistake. Already there is a granted rest of not less than 30 consecutive hours. NFIR considers that the periods of rest in case of any Railway servant may not be reduced for any period whatsoever, because the rest periods as they are, are already inadequate.

Keshave H. Kulkarni

(Keshave H. Kulkarni)
President

LOK SABHA SECRETARIAT
(Committee Branch-II)

Parliament House Annexe,
New Delhi-110001.

No. 6/4(3)/86/CII

Dated the 10th May, 1988
Vaisakha 20, 1910 (Saka).

From

Shri Swarn Singh,
Officer on Special Duty.

To

The Chairman and members of
the Joint Committee on the
Railways Bill, 1986.

SUBJECT: Joint Committee on the Railways Bill, 1986.

....

Sir/Madam,

I am directed to forward herewith a copy of Memorandum No.26 containing suggestions on the provisions of the Railways Bill, 1986 received from the Ministry of Energy (Department of Coal) New Delhi.

2. A copy of comments furnished by the Ministry of Railways (Railway Board) on the above memorandum is also enclosed.

3. You are requested kindly to preserve the above-mentioned documents and bring them for your use at the sittings of the Joint Committee.

Yours faithfully,

OFFICER ON SPECIAL DUTY.

No. 6/4(3)/86/CII

Dated the 10th May, 1988
Vaisakha 20, 1910 (Saka).

Copy, together with enclosure, forwarded to :-

1. Shri K.L. Mohanpuria, Joint Secretary and Legislative Counsel.
2. Shri Z.S. Negi, Assistant Legislative Counsel.

Ministry of Law and Justice (Legislative Department), Government of India, New Delhi.

3. Sr. P.A. to J.S.(C).
4. C.L.C.O. (C).
5. O.S.D.(C-II).

LEGISLATIVE COMMITTEE OFFICER.

Encl: As above.

LOK SABHA SECRETARIAT
(Committee Branch-II)

JOINT COMMITTEE ON THE RAILWAYS BILL, 1986

MEMORANDUM NO. 26

[Comments/suggestions received from Ministry of Energy (Coal Department) Shastri Bhavan New Delhi]

Clause 35

"If the users considered that Railway were charging unreasonable freight for carriage of any commodity or levied any charges which were unreasonable, Section 41 of the Indian Railways Act, 1890 permitted such cases to be brought up before the Railway Rates Tribunal. Clause 35 of the Railway Bill, 1986 specifically debars a reference to the Railway Rates Tribunal for the fixation of wharfage and demurrage charges or conditions attached to such charges. Taking into account the manner in which the rates of demurrage have been stepped up by Railways, it is felt that it is absolutely essential to provide suitable safeguards to the users charging of unreasonable freight charges, if any. It may be, therefore, necessary to have a fresh look on the provisions of Section 35 of the Bills."

Clause 68

"Section 26 of the Indian Railway Act, 1890, prohibited any discrimination by the Railways and complaints should be lodged with the Railway Rates Tribunal against the preferential treatment to any particular party or nature of traffic etc.

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Clause 68 of the Indian Railway Bill, 1986 restricts reference to the Railway Rates Tribunal to undue and unressonable advantages to particular description of traffic in the carriage of goods only, leaving the Railway free to discriminate in all other matters. It is observed that in the matter of demurrage charges there is a major discrimination by the Railways in regard to free loading time permitted and demurrage payable by the collieries. Thus with the proposed amendment it would be difficult for CIL to seek redressal. It is, therefore, felt that it may not be necessary to restrict the scope of Section 28 of the Indian Railways Act, 1890 by the proposed amendment."

Clause 71

"There has been age old practice that weighment of coa wagons was carried out by the Railways and all wagons found overloaded on weighment, were required to be despatched by the Railways in the interest of safety. In the event of a failure to adjust the overload which came to notice, Railways were liable to pay a penalty under Section 93 of the Indian Railways Act, 1890. Railway have been progressively withdrawing from their responsibility to wigh and have given up the practice of adjusting the overload which constitutes a contravention of safety provisions and renders them liable to penalty under Indian Railways Act, 1890. This failure was counter-acted by the Railways by introducing the system of overload penal freight on th users to control the incidence of overloading. In Clause 71 of the Railway Bill, 1986 there is a specific provision which empowers the Railways to levy such overload penal charges at the the rates to be determined by the Railways from the consigner, consign or endorsee, according to their choice. This will no doubt provide a legal provision for the Railways to impose penalty on Railway users but may not meet the safety requirements."

"Further with a view to prevent the incidence of overloading in the interest of safety there always use to be a margin or "loading tolerance" between the minimum chargeable weight and the marked carrying capacity of the wagons. Over the years, Railways have eliminated this margin so much so that now the minimum chargeable weight even exceeds the marked carrying

Capacity by 2 tonnes. In addition, Railways have given up the practice of adjusting the overload. These two steps combinedly have led to heavy overloading of wagons which constitutes a serious safety hazard. The Railway may have a fresh look on this provision in the interest of safety."

Clause 92

"This Section of the Bill deals with goods loaded or delivered at a siding not belonging to the Railways. Bulk of coal loading, which incidentally constitutes over 30% of the total goods loaded on Indian Railways, falls under this category. Clause 92 of the Bill stipulates that the Railway Administration shall not be responsible for any loss, destruction, damage or deterioration of such goods from whatever cause, arising until the wagons containing the goods has been placed at the specified point of interecharge of wagons between the sidings and the railway administration and a railwayservant authorised in this behalf has been informed in writing accordingly by the owner of the siding. It may be mentioned in this connection that majority of the colliery sidings are without any interchange point and not only the loading is done at these sidings but also weighment and documentation, including issue of R/Rs, are completed there. In terms of section 92 of the Bill, Railways will have no liability in respect of wagons loaded and handed over to the Railways till the wagons have reached the point of take off for the servicing station. Clause 92(1) of the Bill thus virtually tends to create a no man's land between the colliery siding and the point of take off for the servicing station. Incidentally, this is the area where a lot of pilferage of coal takes place in the coalfields. It is, therefore, felt that it may be necessary that the bill should specifically provide that once the wagons are taken over and/or attached to the Railway locomotives operated by the Railway staff, the entire responsibility for the safety of goods shall rest with the Railways."

Clause 63

"Clause 63(2) of the Bill stipulates that Railway Administration shall not be responsible for the correctness of weight, description or classification of goods or the number of packages mentioned in the R/Rs unless a certificate to the effect is recorded in the R/Rs by the Railway servant specifically authorised in this behalf. The Bill, however, does not stipulate any obligation on the part of Railways to ensure that staff are authorised for and endorse such certificates in the R/Rs. In effect it amounts to total abrogation of all responsibilities of the Railways in respect of goods delivered to them for carriage. It is, therefore, necessary to either delete this clause or to include another clause making it obligatory on the part of the Railways to make arrangements for endorsement of the requisite certificate in the R/R."

Section 27(1) of Indian Railways Act, 1890 requires the Railways to afford all reasonable facilities for receiving forwarding and delivering of traffic upon and from the defferent Railways and Section 61 of the Act makes ti obligatory for the Railways to furnish to the consignor or his agent, on application render an account showing how much of the charge relates to carriage of goods, demurrage, collection, delivery and other expenses etc. The Railway Bill, 1986 does not contain any such corresponding clauses thereby relieving basic facilities on the one hand and to furnish a break-up of the charges on the other".

Sub:- Joint Committee Railways Bill 1986 - Memorandum No. 26 (comments received from Department of Coal).

***

On the above memorandum, the comments of the Ministry of Railways (Railway Board) are as under:-

Clause 35.

Suggestion of the Department of Coal.

"In the Indian Railways Act 1890 under Section 41, it is provided that a complaint may be filed in the Railway Rates Tribunal against a Railway Administration for charging unreasonable rates between two stations or levying any other unreasonable charge. This safeguard has not been provided in Clause 35 of the Railway Bill 1986 which specifically debars a reference to the Tribunal for fixation of wharfage and demurrage charges."

Comments of Ministry of Railways.

Clause 34 of the New Railways Bill 1986 corresponds to Section 41 of the Railways Act 1890. There is no change in the same. Matters relating to fixation of wharfage, demurrage charges and conditions attached to such charges were already excluded from the purview of the Tribunal under Section 45 of the existing Act which has been retained in Clause 35.

Clause 68. Suggestion of the Department of Coal.

"This Clause restricts the scope of corresponding Section 28 of the Railway Act 1890 leaving the railways free to discriminate in all other matters except carriage of goods."

Comments of the Ministry of Railways.

It is not correct that the scope of Section 28 has been restricted by Clause 68. The only change brought in this Clause is that prohibition against undue advantage in favour of a particular Railway Administration has been deleted because the same has become redundant as all the railway systems are now owned by the Government.

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Clause 71.

Suggestion of the Department of Coal.

"This Clause specifically empowers the railways to levy penal charges for over-loading whereas in the existing Railway Act under Section 93, the railways are liable to pay penalty in the event of a failure to adjust the over-loading which comes to notice. Secondly the margin of 'loading tolerance' between the minimum chargeable weight and the marked carrying capacity has been eliminated over the years. Railways have given up the practice of adjusting the over-loading. These steps have led to heavy over-loading of wagons which constitutes a serious safety hazard."

Comments of the Ministry of Railways.

Clause 71 of the new Railway Bill authorises the railways to levy penal charges for over-loading of wagons by consignor/consignee. It is necessary for safety of operations. It is for the consignor/consignee to ensure that wagons are loaded within the permissible carrying capacity. At the same time, enabling provision has been made authorising the Railway Administration to unload the goods loaded beyond the capacity of the wagon, if detected at the forwarding station or at any place before the destination.

The provision in the old Act under Section 93 for making the railway company liable to pay a penalty has become obsolete because the railway companies are no longer there and therefore it has been deleted. However, other provisions for making it obligatory on the Railway Administration to fix and display the maximum carrying capacity for each wagon conspicuously has been retained. Similarly, the provision for fixing and displaying the maximum number of passengers in a compartment has also been retained in the new Railway Bill. The loading tolerances are laid down by way of administrative instructions from time to time applicable to specific commodities.

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Clause 92.

Suggestion of the Department of Coal.

"This Clause relieves the Railway Administration from responsibility for any loss, destruction, damage or deterioration of goods arising from whatever cause where goods are loaded at a siding not belonging to a Railway Administration. Since majority of the coal sidings are without any interchange point, railways will deny liability in respect of wagons loaded and handed over, till the wagons have reached the point of take off for the serving station. It is, therefore, felt that the Bill should specifically provide that once the wagons are taken over and/or attached to the railway locomotive operated by railway staff the entire responsibility for the safety of goods shall rest with the railways.

Comments of the Ministry of Railways.

This Clause corresponds to Section 76C of the existing Railway Act 1890. The scope of this section is confined to inward traffic delivered at a siding not belonging to the Railway Administration. This has now been extended to outward traffic also. Private siding holders should assure responsibility for security of goods within their premises. If the areas have not been demarcated or interchange points not so far fixed, this can now be done.

Clause 63.

Suggestion of the Department of Coal.

"This Clause stipulates that Railway Administration shall not responsible for the correctness of weight, description or classification of goods or the number of packages mentioned in the R.R. unless a certificate to the effect is recorded in the R.R. by the railway servant authorised in this behalf. The Bill however does not stipulate any obligation on the part of railways to ensure that staff are authorised for and endorse such certificates in the R.Rs. On the other hand Section 27(1) of the Railway Act 1890 requires the railways to afford all reasonable facilities for receiving forwarding and and delivering of traffic which has now been deleted. Similarly Section 61 of the Act makes it obligatory

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for the railway to furnish to the consignor an account showing how much of the charge relates to carriage of goods, demurrage, correction, delivery and other expenses which has also been deleted in the new Bill without making any corresponding provision.

Comments of the Ministry of Railways.

Clause 63 is a new Clause which has been inserted in the interest of the trade to give statutory recognition to the railway receipt as a negotiable instrument. The certificate regarding correctness of weight, description and number of packages etc. can only be given in those cases where a railway servant witnesses the loading. This is generally not feasible where bulk loading of full train loads takes place. In case of 'smalls' traffic the same is possible and clear RRs are issued.

The deletion of provision relating to affording all reasonable facilities by one railway administration to another is consequent on all railway systems being owned and managed by the Government. Similarly the provision regarding rendering of account has been deleted because all charges including terminal charges transhipment charges etc. have now been included in freight which is invariably recorded in R.R. Earlier in the Era of railway companies, different rates of freight were levied by different systems which is now abolished. These provisions have become redundant and therefore deleted.

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